SOME OBSERVATIONS UPON THE Eccleſiaſtical Juriſdiction OF THE *KINGS* of *ENGLAND.*

WITH

AN APPENDIX

In Anſwer to part of a Late Book Intitled, *The KING'S Viſitatorial Power Aſſerted.*

R. Washington

LONDON,
Printed for *William Battersby*, at *Thavies-Inn* Gate in *Holborn*, and *Thomas Baſſet*, at the *George* in *Fleet-ſtreet.* 1689.

UMI

262.9
W3195

To the Reader.

A *Late* Declaration *for* Liberty of Conſcience, *whereby the* King *Aſſum'd a Power of* Suſpending *All* Penal Laws *in matters of* Religion, *The* Eccleſiaſtical Commiſſion, *and ſuſpending by vertue of it the Biſhop of* London, *and depriving the Fellows of* Magdalen-Colledge, *occaſioned a general diſſatisfaction in the Nation, and produc't ſome Pamphlets to juſtifie all thoſe Proceedings*, viz. *One Entituled* The King's Right of Indulgence in Spiritual Matters, with the Equity thereof Aſſerted; *Another*, A Vindication of the Proceedings of his Majeſtie's Eccleſiaſtical Commiſſioners againſt the Biſhop of *London* and the Fellows of Magdalen-Colledge; *A Third*, The Legality of the Court held by his Majeſtie's Eccleſiaſtical Commiſſioners Defended; *And laſt of all*, The King's Viſitatorial power aſſerted. *Peruſing theſe Pamphlets, I could not but obſerve that one and the ſame inveterate error ran through them* All, viz. *Their aſcribing to the* King *all ſuch power, Juriſdiction and Authority, as by the Law of* England *and the very Original Conſtitution of our Government, is lodged in the Legiſlative body of the Kingdom; and which the King is intruſted onely with the Adminiſtration of, and that in his Courts of Juſtice, I had attempted the anſwering more than one of thoſe Pamphlets, but I found that at every turn I met with that miſtake in the Authors: who either through Ignorance or*

Design or both, argue for the King's *Prerogative* from whatever they find to have been done in Great Councils of the Realm, or in Ordinary Courts of Justice: this one mistake, together with some rash and unwarranted expressions gleaned out of a few late Writers, will be found to be the main strength of their Cause. I thought therefore that it might be a work of some use, especially at this time, to endeavour the removal of this rubbish, and the laying open in some measure the nature of the Ecclesiastical Jurisdiction of the Crown of England; both because we have lately seen how dangerous and fatal these mistakes are, and because although much has been written since the Reformation by Mr. Pryn, Sir Roger Twisden, and others, to vindicate the Ecclesiastical Supremacy from Forein Pretensions and Usurpations, yet I know not whether any has yet taken in hand to give an Account of it, as stands by Law here at home. I do therefore offer these few Observations upon it to the publick, desiring the Judicious Reader's pardon for what slips and imperfections he may find herein, and have added in an Appendix an Answer to a Section in the Book concerning Visitatorial Power, wherein I hope the Reader will be satisfied how groundless and weak most of the arguments are, which our Prerogative-mongers pretend to draw from Antiquity. These following Observations are brought down no lower then to the latter end of King Henry the eighth's Reign, I design a Continuation, with Remarks upon some Judicial Presidents that have past since the Reformation, if these Papers are well received; if not, I shall save time and be eas'd of trouble.

SOME OBSERVATIONS Upon the *Ecclesiastical Jurisdiction* Of the King's of *ENGLAND*.

IT is obvious enough to judicious and intelligent Persons, by what unhappy Circumstances it comes to pass, that one great Mean of our Preservation seems at present in a manner *hid from our Eyes*. But since *Experience* is said to be the *Mistress of Fools*, it is hoped that *at least in this our Day we may see the things that belong to our Peace*; and remember that the reason why *the* Ostrich *leaveth her Eggs in the Dust, forgetting that the Foot may crush them, is, because God hath deprived her of Wisdom, neither hath he imparted to her Understanding.* Luke 19. 42. Job 39. 13, 14, 15, 17.

If Interest or Ambition have swayed with some of us, as far as in them lay, Prov. 22. 28. *to remove the antient Land-Marks which* Josh. 7. 19. *our Fore-Fathers have set; let such give Glory to God, and take Shame to themselves.* In the mean time, what effect soever these ensuing Papers may have upon our Friends, at least let our Adversaries 1 Kings 19. 18. *see that there is a Remnant left in Israel, that have not bowed their Knees to* Baal.

An Arch-Bishop may tell us, *that the King may take what Causes he pleases to determin, from the Determination of the Judges, and determin them himself; and that it is clear in Divinity, that such Authority belongs to the King by the Word of God.* The Legality of the Ecclesiastical Commission defended. *pag.* 6, 7. But as we are not to receive even the Word of God it self, *under the Sanction of a Human Law*, from the Mouth of an *Arch-Bishop*, or from the whole Body of the *Clergy*; much less are we bound to submit to any Courtly Glosses upon that Sacred Text, concerning the Power of Kings: whose Authority, as we suppose it to be grounded wholly upon Municipal Laws, so we know the Law to be a better Foundation, and a better Security, than any imaginary Authority pretended from Scripture.

ture. And if the *Defender* would have obſerved what the Lord *Coke* in the Preſence, and with the clear conſent of all the *Judges* and *Barons* of the *Exchequer*, anſwered upon that occaſion before the King himſelf, both from Reaſon and Authority, he would have ſilenced the *Arch-Biſhops* Divinity, and ſaved me the trouble of taking notice of that part of his Diſcourſe. It was their Opinion, *that the King could not in Perſon adjudge any Caſe:* Which they confirm with ſuch Reaſons and Authorities from judicial Records and Acts of Parliament, that it ſeems very imprudent in the *Defender*, to urge that as an Authority, which received ſo ſolid, ſo learned, and ſo honeſt an Anſwer. *Coke* 12. *Rep.* *pag.* 63, 64, 65.

Judges and *Serjeants* may entertain themſelves with what Diſcourſe they pleaſe *poſt prandium*, and in their mooting upon one extrajudicial Point may talk of another by the by; and if one of the Company put this tranſient Diſcourſe into Paper, ſo that afterwards it gets into the Preſs, Good God! what condition are we come into, when Table-chat muſt be obtruded upon us for Law! Legality of, &c. defended. *pag.* 10, 11. *Coke* 12. *Rep.* *pag.* 19, &c.

To go a little further; *Judges* in

Courts of *Juſtice* may pretend to reſolve what Points of Law they pleaſe; but if their Reſolutions are not pertinent to the Matter depending before them in Judgment, and neceſſary for the deciding it, ſuch Reſolutions go for nothing, becauſe the Judges had no Authority ſo to reſolve: And I am fully aſſured, that this Point, *viz. Whether any King or Queen of* England *for the time being, might iſſue an Eccleſiaſtical Commiſſion, ſuch as*, &c. *by the Antient Perogative and Law of* England, never yet came in queſtion judicially before any Court whatſoever.

Legality of, &c. defended. *Pag.* 8. 9. *Coke* 5. *Rep. Cawdry's Caſe.*

The Caſe betwixt *Cawdry* and *Atton* turned upon this Point, *viz. Whether the High Commiſſioners might deprive for the firſt Offence, whereas the Act of* 1mo. Eliz. cap. 2. *inflicts it only for the ſecond*? And reſolved that the Statute is to be underſtood, when they proſecute upon the Statute by way of Indictment, and not to reſtrain the *Eccleſiaſtical Juriſdiction*. What's this to the Queſtion, *Whether ſuch a Commiſſion might have been iſſued without an Act of Parliament impowering the Queen to iſſue it*?

Pop. Rep. pag. 59, 60.

Nor do the *Judges* in that Caſe, nor the Lord *Coke* in his *double-tongued* Report

port of it, nor the *poſt prandium* Judges and Serjeants ſo much as pretend to any manner of Authority for their Opinion there delivered, that the *King* might grant ſuch a Commiſſion by his *Perogative at Common Law*: Nor do's the late *Defender* quote any antient *Record*, *Hiſtory*, *Maxim* of *Law*, or any other *Legal Authority*, or *Hiſtorical Proof* whatſoever, to clear the Point: Nor will I reflect upon ſome Reſolutions of Judges that have been in former times, or in this Age of ours; which gained ſo little Credit upon their Authorities, that exemplary Puniſhments have and may be inflicted upon ſome of the Reſolvers. Ship-Money.

But tho this Point be left ſo forlorn by the *Defender*, as having nothing to ſupport it on his ſide, but an *ipſe dixit*; and tho we live in an Age, in which (bleſſed be God) moſt Men have a better Opinion of their own Underſtandings, than to take things upon truſt; yet, becauſe this Queſtion concerning *the Legality of an Eccleſiaſtical Commiſſion* reſolves it ſelf into the miſtaken notion of a *Perſonal unbounded Supremacy*; and becauſe ſome of our *Clergy* give us Schemes of Government, according to which this *Commiſſion* is the moſt juſtifi-

able thing in the World; I am desirous to offer a few Observations concerning the *Ecclesiastical Jurisdiction of the Kings of* England; in doing of which, the only thing I aim at, is the putting others who are better qualified, and perhaps misinformed upon farther Inquiries, if haply I may compass that.

Legality of, &c. defended. *pag.* 38. 39.

We are told that our *Common Lawyers* have often affirmed, *That whatever the Pope* de facto *formerly did within this Realm by the Canon Law, that of right belongs to our Kings:* That on this ground it has been adjudged, *That the Legislative Power in Matters Ecclesiastical is lodged in the King. The Pope made Laws for the Government of the Clergy, and so may the King; and so much Queen* Elizabeth, *as Supreme Head of the Church of* England, *exercised*, &c. *And that the Power in the King in Matters Ecclesiastical, is too ample to be bounded by an Act of Parliament.*

But notwithstanding these and other *Bravado's*, we are told also, that the *Acts* of *Parliament* which restore the *Ecclesiastical Jurisdiction* to the *Crown*, are but *Declarative*, that they give no new *Power*, but recognize what always was *de Jure* the King's Right: Which

Vindication. *pag.* 6.

Legality of, &c. defended. *pag.* 8.

naturally

naturally ſends us back to Antiquity, to enquire how the *Supremacy* was then managed and exerted, before a *Forreign Power* had made inroads upon it. They that affirm this or the other *Act* to bebut *Declarative*, and that this or that may be done by the *Common Law*, always alledge (if they intend to perſwade) ſome Judicial or other Preſident, ſome Record or other, ſome anciently received Maxime or Rule of Law: They that *reſolve* without ſuch grounds for their Reſolution, ſet up for *Law-makers* and not *Interpreters*.

Now it was no difficult matter to reſolve that the *Supreme Juriſdiction, Eccleſiaſtical* as well as Temporal, did originally belong to the *Crown* of *England*. Every *Chronicle Writer* can tell us when the power of the Court of *Rome* prevailed, to lop off ſome of its Branches: And the *Crown* muſt needs have it before it could loſe it. But whether our modern conceptions of the *Supremacy* are adequate to that *Ancient Legal Supremacy* at the *Common Law*, of which we agree the reſtoring of *Eccleſiaſtical Juriſdiction* by Act of Parliament to be but *Declarative*, is certainly worth *their* Enquiry, who pretending

that *All* Laws concerning it are but *declarative*, muſt either juſtifie that Poſition and other modern Aſcriptions from Antiquity, or confeſs the vanity of them.

The *Ancient Eccleſiaſtical Supremacy* of the Kings of this Realm, was no *perſonal Prerogative*: But our Kings were *Head of the Church* as they were *Head of the State*, governing both by Laws made by the ſame Authority (if deſigned to be binding to all) and adminiſtred in the ſame Courts, till *King* William *the Conqueror's* Reign, and from that time downwards, in the *Spiritual* and *Temporal* Courts apart.

All Matters whatſoever concerning *Religion*, *Diſcipline*, *Ceremonies*, with all *Laws*, *Canons*, and *Articles* whatſoever relating thereunto, by which the *Laity* were to be bound, were anciently Enacted by the ſame Authority that made our Temporal Laws: and without ſuch Authority are not binding to the *Laity* to this day, nor ever were.

Nor has the King any power by the Law to impoſe any *New Article*, *Ceremony*, *Practice*, *Rule*, or *Order* whatſoever, upon the *Clergy* or any of them under any ſort of Penalty, without an Act of *Convocation* at leaſt. In

In the first place I will give a few Instances before the entry of the *Saxons*, by which it will appear in some measure how the *Law* stood in those days with respect to the *Supremacy*.

In the Year 448, *Germanus* and *Lupus*, two Learned Bishops, were sent hither out of *France* to suppress the *Pelagian* Heresie: Upon which occasion a Synod was assembled at *Verolam. Aderat Populus, expectabatur futurus Judex. Adstabant partes*, &c. After a long debate *Populus arbiter vix manus continet, Judicium clamore contestando*, &c. In this first *Synod* that we read of in *England*, the *People* were present, and were *Judges*; and by their determination a great Controversie of Religion was settled * *Bed. Eccl. Histor. Gent. Anglor. Lib.* 1. *Cap.* 17. Thus it was in the first Christian *Council* that ever sate, *viz. the* 15*th Chapter of the Acts of the Apostles.* After the matter had been debated, whether *the believing Gentiles ought to be Circumcised, and to keep Moses his Law?* verse 22d. *It pleased the Apostles and Elders* with the whole Church *to send*, &c. *And they wrote Letters after this manner, The Apostles, and Elders, and Brethren send*

* Vide *Spelm. Concil. Tom.* 1. *p.* 47, 48. An Account of this Council, and of the time when it was held.

ſend Greeting unto, &c. *It ſeemed good to the Holy Ghoſt and to us*, &c. So that the *Laity* as well as the *Clergy* had in this Council deciſive Votes. And if it ſhall appear by what follows, that *the People* of this Nation never were, nor can to this day be bound by the ſettling or determining any point of *Religion* any where elſe than by themſelves in *Parliament*; then at leaſt the power of ſettling and determining Points of Doctrine and Practice, either is no part of the King's *Eccleſiaſtical Supremacy*, or is not *perſonal*; But muſt be exerted in *Parliament*.

In the *Britiſh* times *Biſhopricks* were conferred in Parliament. *Petivit Rex* [Arthurus] *Eboracum, inſtantis Natalis Domini Feſtum celebraturus. Cumq; urbem intraſſet, viſa Sacrarum Eccleſiarum deſolatione, condoluit. Expulſo namque beato* Samſone *Archiepiſcopo, cunctiſque ſanctæ Religionis viris, Templa ſemi-uſta ab officio Dei ceſſabant. Tanta etenim Paganorum inſania prævaluerat. Exin* convocato Clero & Populo *Capellanum ſuum Metropolitanæ ſedi Deſtinat. Eccleſias uſque ad ſolum dirutas renovat: Atque Religioſis cœtibus Virorum & Mulierum exornat.* Galfrid Monu-

Monumeth. *lib. 9. cap.* 8. Here King *Arthur* in an *Aſſembly of his Clergy and People* makes an *Arch-Biſhop*, reſtores ruinous *Churches*, and repleniſhes *Monaſteries* with *Monks* and *Nuns*. If a *Judge* or a *Lawyer* ſhould ſay, tho' he took along with him the concurrence and aſſiſtance of his *Parliament*, yet he might have done all this by his *Prerogative* without them; I muſt inſiſt upon proof of ſuch *Prerogative*. If a *Divine* tells me, that by the *Law of God* ſuch *Prerogatives* belong to *Princes*, for that the Power of the Prince is *Superior* to that of the *Law*, not given by *Law*, but from *God*; then cannot I comprehend how our Churchmen can value themſelves upon their being *Eſtabliſhed by Law*, if they acknowledge a Power upon Earth above the *Law*.

But if it ſhall appear by what follows, that till the Reign of King *John*, *Arch-Biſhopricks*, *Biſhopricks*, and other *Eccleſiaſtical Dignities* were conferred in and by the *Parliament*; then will a common miſtake appear to run through many of the *Books of Law*; wherein we frequently read, that before his time they were *donative*, and conferred by the King *Per Traditionem annuli baculi:* Con-

Cr. Jac. 553, 554. Ro. rep 2d. part. 130. Sir John Dav, *rep.*

Confounding the *Election* with the *Inveſtiture*, and aſcribing that to the *King ſolely*, which was *the Act of the King and Parliament.*

p. 63. Biſhop *Uſher* in his *Antiqu. Britan. Eccleſ.* Gives us other Inſtances of *Biſhops* Elected in *Parliaments* or *Great Councils. Poſtquam prædicti ſeniores* (Germanus & Lupus) *Pelagianam Hæreſin extirpaverant, Epiſcopos pluribus in locis Britanniæ conſecraverunt. Super omnes autem Britannos dextralis partis* Britanni *beatum Dubricium ſummum Doctorem à* Rege & ab omni Parochia Electum *Archiepiſcopum conſecraverunt. Hac dignitate ei à* Germano & Lupo *data, conſtituerunt ei Epiſcopalem ſedem, conceſſu Regis* Maurici, *Principum*; Cleri & Populi *apud* Podium Lantavi. *Addit* Galfridus *ab eodem* Dubricio *Urbis Legionum tunc Archiepiſcopo* Arthurum *Regni Britannici diademate inſignitum*; *eundemq*; (Dubricium) in Curia illa magna, *quam apud urbem legionum* Arthurus *tenuiſſe dicitur, in eremiticam vitam anhelantem, ſeſe ab Archiepiſcopali ſede depoſuiſſe.*

Eodem tempore, Davide *procurante,* Menevium *Metropolitanæ ſedis factam eſſe tranſlationem, refert* Giraldus Cambrenſis:

Et

& *postea in* Brevienſi Synodo *confirmatam. In illâ ſcil. Synodo magnâ omnium Epiſcoporum & Abbatum totius Cambriæ*, nec non & Cleri Univerſi, una cum Populo Collecta *propter Pelagianiam Hæreſin*, (that Doctrin it ſeems revived, tho it had been publickly over-ruled,) *ubi & unanimi* totius Conventus tam Electione quam Acclamatione, *quanquam invitus & renitens* David *in Archiepiſcopum eſt ſublimatus*. Uſher Britan. Antiqu. *pag.* 64.

Now if in the times of the *Britains* the *People* aſſembled in the *Common Councils* of the *Nation*, had deciſive Votes in *Controverſies* of *Religion*, in the Election of *Arch-Biſhops* and *Biſhops*, if by their Authority ruinous Churches and Houſes of Religion were repaired and furniſhed with *Monks* and *Nuns*, *Biſhops Sees* founded and tranſlated; if in thoſe Aſſemblies *Reſignations* of *Biſhopricks* were made, *&c.* Then we may reaſonably conclude, that the *Supremacy*, commonly ſo called, was lodged and veſted juſt where the *Legiſlative Power* in *Temporal Matters* reſided; to wit, in the *King's*, together with their *Commune concilium Regni*. But the firſt is true, as appears by the foregoing Authorities. *Ergo*, &c.

Nor

V. Dr. *Burnet's* History of the Rights of Princes in the disposing of Ecclesiastical Benefices, *&c.*

Nor was it peculiar to this Nation, to have the *People* chuse *Bishops*. It was the Universal Practice of all Christendom for many hundred years, as is notoriously known to all that read any History.

In the second place I will exhibit a very few Instances of the *Saxon* Times, during the *Heptarchy*. The Reader may consult many more at his leisure.

No marvel if we find this *People* submitting to nothing in *Religion*, but what was ordain'd by themselves. *De majoribus omnes* was one of their Fundamental Constitutions before they came hither; and it is continued here to this day. And *Matters* of *Religion* were amongst their *Majora*, even before they received Christianity.

Tacitus de moribus Germanorum. cap. 11.

Accordingly *Edwin* King of *Northumberland*, *habito cum sapientibus concilio*, renounced his *Paganism*, and he and they embraced the *Christian Faith*. This is described in *Bede* and *Huntington*, to have been done in such an Assembly of Men, as the *Parliaments* of those days are generally mentioned to consist of.

Vid. Bed. Eccl. Hist. Lib. 2. *Cap.* 13 *Huntington. Lib.* 3. *Pag.* 188.

After the *Christian Religion* had spread amongst the *Saxons*, the *Bishops* and *Clergy* frequently held *Synods* without the

the *Laity* for Church-Visitation, and made constitutions for the Regulation of the Clergy, which they obeyed and submitted to by reason of their *Oath* of *Canonical Obedience*: But, as nothing transacted in those Assemblies of the the Clergy bound the People, so can no instance be produced of the Clergy's being bound by any Act of the King, not assented to in the Provincial *Synods* of those Times. But the Clergy themselves, both as to Doctrin, Discipline and Ceremonies, were bound by the publick Laws of the Kingdom, enacted in the *Great Councils* of the Nation. *Vid. Spelm. Conc. ubique.*

In the year 673, *Concilium* Herudfordiæ *celebratum est sub initio primi anni Lotharii Regis Cantiæ, Præsidente Theodoro Cantuariæ Archiepiscopo.* At this Council (says *Matthew* of *Westm.*) were present *Episcopi Angliæ & Reges, & Magnates Universi*: Where *Theodore* proposed *decem capitula* out of a Book of Canons before them *All*; which were there *Assented* to, and *Subscribed*. The first was concerning the observation of *Easter*; the ninth, that the number of *Bishops* should be encreased *crescente fidelium numero*. The rest were concerning *Matt. West. pag.* 122, 123.

Bishops

Bishops Bishopricks, Monks, Marriage, Fornication, &c. *Spelm. Council.* Vol. 1. pag. 152, 153.

The Presence of the *Bishops* and all the *Magnates*, makes this Assembly appear to have been a *Parliament* of those Times. What Orders of Men were comprehended under the word *Magnates*, is not material to our present purpose. The *Great Councils* that made the Laws, and without whom no Laws were made, are frequently so described by our antient *Historians*.

In the year 692, *Ina* King of the *West Saxons*, enacted many *Constitutions* for the Government of the *Church*, as; *De formulâ vivendi Ministrorum Dei. De baptizandis Infantibus. De opere in die Dominico. De immunitate suâ*, &c. The Preface to which Laws runs thus; *Ego Inas Dei beneficio Occiduorum Saxonum Rex, suasu & instituto Cenredi Patris mei & Heddæ & Erkenwaldi Episcoporum meorum*, Omnium Senatorum meorum, & natu Majorum sapientum Populi mei, *in magnâ servorum Dei frequentiâ, religiosè studebam tam animorum nostrorum saluti, tum communi Regni Nostri conservationi, ac legitimæ pactorum fœdera*, &c. Here the King, his Bishops, all

all his Senators, the *Natu Majores & Sapientes* of his People (which are Descriptions of the Laity in Parliaments of those Times,) and a great number of *Gods Servants* (by which the *Clergy* are meant) make *Ecclesiastical Laws*. This was a *Parliament*, as appears, not only by the presence of the *Laity*, but by many *Temporal Laws* enacted at the same time. *Spelm. Conc. Tom. 1. Fol.* 182, 183, &c.

In the year 694. *Concilium Magnum Becancelde celebratum est, Presidente Withredo Rege Cantiæ, necnon Bertualdo Archiepiscopo Britanniæ, cum Tobiâ Episcopo Roffensi, Abbatibus, Abbatissis, Presbyteris, Diaconibus, Ducibus, Satrapis*, &c. All these *pariter tractabant, anxiè examinabant de Statu Ecclesiarum Dei*, &c. Here the King's *Legislative Power* in *Ecclesiastical Matters* exerted it self, not *Personally*, but in this *Great Council*. They do all enact, *Statuimus, decernimus, præcipimus*. For when the *King* himself is spoken of, the *Singular Number* is used, *Nullus unquam habeat licentiam accipere alicujus Ecclesiæ vel Familiæ Monasterii Dominium, quæ à me ipso vel antecessoribus meis*, &c. *Spelm. Conc. Pag.* 189, 190.

A Council was held at *Berghamstede*,

Anno 5to. *Withredi Regis Cantiæ, i. e. Anno Christi* 697. *Sub Bertwaldo Archiepiscopo Cantuariensi, præsentibus Gybmundo Episcopo Roffensi & omnibus Ordinibus Gentis illius, cum Viris quibusdam militaribus. In quo de moribus cavetur ad Ecclesiæ cognitionem plerumque pertinentibus.* These *Ordines Gentis illius* seem by the Preface to these Laws, to be meant of the *Ordines Ecclesiastici Gentis illius*; but withal, that they *cum viris utique militaribus humanissimè &* communi Omnium Assensu *has Leges decrevêre.* Spelm. Conc. 194. So that these *Ecclesiastical Laws* were enacted by the assent of the *viri Militares*, as well as of the *King* and the *Clergy*.

A Council was held at *Cloveshoe sub Cuthberto Doroberniæ Archiepiscopo, præsentibus (præter Episcopos, Sacerdotes & Ecclesiasticos quamplurimos) Edilbaldo Merciorum Rege cum suis Principibus & Ducibus, Anno Dom.* 747. *In quo decernebatur de unitate Ecclesiæ, de Statu Christianæ Religionis, & de Concordiâ & pace,* &c. Spelm. Conc. 242, &c.

In the Year 787, *Concilium Legatinum & Pananglicum* was held at *Calchyth*, in which many *Canons* were made *de fide primitùs susceptâ retinendâ, aliisque*

que, ad Ecclesiæ regimen pertinentibus. This Council was held *Coram Rege Ælfwaldo & Archiepiscopo Eanbaldo & omnibus Episcopis & Abbatibus Regionis, seu Senatoribus & Ducibus* & Populo terræ; who *All* confirmed them. After these *Ecclesiastical Laws* had been thus enacted by *Ælfwald* King of *Northumberland*, the *Legates* carried them into the *Council* or *Parliament* of the *Mercians*, where the glorious King *Offa*, *cum Senatoribus Terræ, una cum*, &c. *convenerat.* There they were read in *Latin* and *Teutonick*, that *All* might understand, and *All* promised to observe them; and the *King* and his *Princes*, the *Archbishop* and his *Companions*, signed them with the Sign of the Cross, *Spelm. Conc. Vol.* 1. *Fol.* 291, 292, &c.

Many Instances of this kind might have been added, as particularly that of the Council at *Hatfield*, *An.* 680. wherein the *Canons* of five *General Councils* were received; which was a *Witena Gemote*, a *Conventus Sapientum*: But I spare time, & am endeavouring only to open a Door.

By these Instances it is apparent, that the same Body of Men that enacted the *Temporal Laws* of the Kingdom, did in the very same *Councils* make Laws

for the Government of the Church. Indeed, the whole Fabrick of the *English Saxon Church* was built upon Acts of Parliament; nothing, in which the whole Community was concerned, was enacted, decreed or eſtabliſhed, but by that Authority. For whoſo reads impartially the Hiſtories of thoſe times, and compares them with one another, will find, that as moſt of thoſe Antient *Councils*, commonly ſo called, were no other than (to ſpeak in our Modern Language) *Parliaments*; ſo not any thing whatſoever in *Religion*, obligatory to the *People*, whether in matters of *Faith*, *Diſcipline*, *Ceremonies*, or any *Religious Obſervances*, was impoſed, but in ſuch Aſſemblies as no Man can deny to have been Parliaments of thoſe Times, that has not a Fore-head of Braſs. For the Preſence not of the *King*'s only, but of the *Duces*, *Principes*, *Satrapæ*, *Populus terræ*, &c. ſhews ſufficiently, that neither the *Kings*, nor the *Kings* and the *Clergy*, without the concurrent Authority of the ſame Perſons, that enacted *Temporal Laws*, could preſcribe *General Laws* in matters of *Religion*. I do not diſpute what Orders of Men among the *Saxons* were deſcribed by *Duces*, *Principes*, &c. but

but ſure I am, that they were *Lay-men*; and as ſure, that they *aſſented* to and *confirmed* thoſe Laws, without whoſe *aſſent* they had been no Laws: So that the *Kings* of thoſe Times had no greater *Legiſlative Power* in *Eccleſiaſtical Matters* than in *Temporal*.

The tearing the *Eccleſiaſtical Power* from the *Temporal*, was the curſed Root of the Kingdom of *Antichriſt*: It was that that mounted the *Papacy*. Thoſe Powers never were diſtinct in *England*, nor moſt other Nations, till that *See* got the aſcendant. And it is a ſtrange inconſiſtency to argue one while, that *whatever the Pope* de facto, *formerly did by the Canon Law, that of right belongs to our Kings*; and another while, that the ſeveral Acts that reſtore the *Eccleſiaſtical Juriſdiction to the Crown*, are but *Declarative*. It ſhews how little the *Supremacy* is underſtood by Modern Aſſerters of it, and how little they are acquainted with the antient Government of *England*.

The Third *Period of Time* to be conſidered, ſhall be from the uniting of the ſeveral Kingdoms of the *Saxons* under one Monarchy, to the *Norman* Conqueſt.

In this Division we find a Letter from Pope *Formosus* to King *Edward* the Elder, wherein the Pope complains, that the Country of the *West-Saxons* had wanted *Bishops* for seven whole Years: Upon the receipt of this Letter, the King calls *Synodum Senatorum Gentis Anglorum*, who being assembled, *Singulu tribubus Gervisiorum* (*West-Saxonum*) *Singulos constituerunt Episcopos, & quod olim duo habuerunt in quinque diviserunt.* Spelm. Conc. 387, 388.

The *Ecclesiastical Laws* of King *Edward* the *Elder* and *Guthrune* the *Dane*, begin with this *Proœmium: Hæc sunt Senatus consulta ac instituta, quæ primo* Aluredus & Guthrunus *Reges, deinde* Edwardus & Guthrunus *Reges, illis ipsis temporibus tulêre, cum pacis fœdus Duci & Angli ferierunt. Quæque postea à sapientibus* (Tha Witan) *sæpius recitata atque ad Communem Regni utilitatem aucta atque amplificata sunt.* The Titles of some of these Laws are, *De Apostatis, De Correctione Ordinatorum*, (i. e.) *Sacris initiatorum, De incestu, De jejuniis*, &c. All of Ecclesiastical Cognisance, or at least of After-times so reputed. These are called *Senatûs Consulta*, than which a more apposite Word could scarce have been

been used for *Acts* of *Parliament*, and were assented to by the *Wyten*; from which Word the *Saxon* term for Parliaments, *Wytena Gemot*, is derived. *Spelm. Conc.* 390, &c.

A *Concilium Celebre* was held under King *Athelstane*, *in quo Leges plurimæ, tum Civiles, tum Ecclesiasticæ, statuebantur*. It's true, the Civil Laws are omitted; and Sir *Henry Spelman* gives us an account only of the *Ecclesiastical Laws* made at this Assembly, which conclude *Decreta actaque hæc sunt in celebri Gratanleano Concilio, cui* Wulfelmus *interfuit Archiepiscopus, & cum eo Optimates & Sapientes ab* Athelstano *evocati frequentissimi*. Spel. Conc. *p.* 396, &c.

King *Edmund* held a Council *Anno* 944, where many *Ecclesiastical* as well as *Secular Laws* were made, as, *De vitæ castitate eorum, qui Sacris initiantur, De fani instauratione, De pejerantibus, De iis qui barbara factitârunt Sacrificia*, &c. And this Council is expressed to have been *Conventus tam Ecclesiasticorum, quam Laicorum; celebris tam Ecclesiasticorum quam Laicorum frequentia*. Spelm. Conc. *p.* 419, &c.

I will give no more instances before the *Conquest*, tho numbers are to be

had which lye ſcattered up and down in the *Monkiſh Hiſtories*; and being compared with one another, will ſufficiently diſcloſe what I aſſert. For ſometimes *Laws* that concern *Temporal Affairs*, as well as *Eccleſiaſtical*, are ſaid to have been made by ſuch or ſuch a *King* in one Author; which very Laws another *Hiſtorian* tells us, were made in the *Great Council*; which yet they have no Uniform, appropriated Expreſſion, Term or Denomination for: Juſt as we in common Parlance ſay, King *Edward* the Third, or King *Henry* the Seventh, made ſuch or ſuch a Law; which yet every Man underſtands to have been made in *Parliament*, becauſe elſe it were not a Law.

That *Biſhopricks* and other *Eccleſiaſtical Dignities*, were in the *Saxon* times conferred in *Parliament*; we have the further Teſtimony of *Ingulphus*, who was Abbot of *Crowland* in King *William* the Conquerors Reign, *A multis annis retroactis nulla erat electio Prælatorum merè Libera & Canonica: Sed omnes Dignitates tam Epiſcoporum quam Abbatum Regis Curia pro ſua complacentia conferebat.* Ingulph. Hiſt. *Fol.* 509. *b.*

For the Election of *Wulſtan* Biſhop of *Worc. Temp. Edw. Confeſſ.* v. *Matt. Paris.* p. 20. That in his Election there concurr'd *Plebis Petitio, Voluntas Epiſcoporum, Gratia Procerum, Regis Authoritas.*

Concerning

Concerning *Appeals* in *Eccleſiaſtical Cauſes*, I ſhall ſay more in the next Diviſion; Only here it will be proper to inſert, that the Conſtitutions of *Clarendon*, one of which is expreſly concerning *Appeals*, are ſaid to contain the *Avitæ Conſuetudines Regni*. And *William* of *Malmeſbury* relates a remarkable Story of *Wilfrid* Archbiſhop of *York*, whoſe Archbiſhoprick being divided by the *Common Council* of the *Northumbrian* Kingdom, into four Biſhopricks; he appealed to the *Pope*, who wrote Letters to the King in his behalf; upon the receipt of which, the King told the Legates, *Se quidem Legatorum Perſonis honorem ut parentibus deferre; cæterùm aſſenſum legationi omninò abnuere, quod eſſet contra rationem homini jam bis à toto Anglorum Concilio damnato, propter quælibet Apoſtolica Scripta, communicare.* This ſhews, that tho a Prelate thought the Pope's Authority might ſtand him in ſtead, yet the Nation acknowledged no Foreign Juriſdiction, and that the Supreme Judicature here from which the Archbiſhop appealed, was that of the *Parliament* and not of the *King*.

Malmeſbur. de geſtis Pontificum Anglor. Lib. 3.

The

The Power of *dispensing* with Laws concerning *Church Matters*, could not be a Personal Perogative in the King in these days; for *Dispensations* were not born till Two hundred years after the *Conquest*; as will appear hereafter.

The fourth Period of Time shall be from the *Norman* Entrance, down to the Reign of King *John*: In this time it was, that the *Ecclesiastical Jurisdiction* of the *Crown* suffered a Rape, and that four very considerable Branches were cut off. By this time the *Pope* had shaken off his Dependance upon the Emperor; the *Laity* were excluded from voting in his Election: And the Game plaid at *Rome*, was, by setting the *Clergy* in a state of Exemption from *Temporal Laws*, as to their Persons and Possessions; and excluding the *Laity*, *King*'s themselves as well as *Parliaments*, from *Ecclesiastical Power*, to govern Mens Consciences first, and then all they had, *directly* or *indirectly*. But this was a work of Time, and could not be effected but by degrees.

King *William* the First, made one step this way, by dividing the *Spiritual* and *Temporal* Courts; without which perhaps it had been impossible for the

Canon

Canon Law to have broken in upon us.

But yet in his time, tho he was certainly in the sense of his *Great Council*, as much *Head* of the *English Church* as any of his Predecessors were, or his Successors are by Law; for he was declared to be *Vicarius summi Regis, ad hoc constitutus at Regnum terrenum & Populum, Domini & super omnia, Sanctam veneretur Ecclesiam ejus, & regat, & ab injuriosis defendat, & malefices ab eâ evellat, & destruat, & penitus disperdat: Quod nisi fecerit, nec Regis nomen in eo constabit.* Yet in his time (I say) a *Personal Supremacy*, independant of the *Great Council* of the Nation, was never pretended to: For he reformed the *Ecclesiastical Laws* and *Canons* of the *Church*, no otherwise than *de Communi Consilio Archiepiscoporum, Episcoporum, Abbatum & omnium Procerum Regni sui*, &c.

Lambard de priscis Anglorum Regibus. p. 138, 142. & *Hoved.* p. 345.

Seld. Not. & Spectlag. ad Eadmer. p. 167 *Lamb. de priscis Anglor. Legib.* p. 158.

Nor was this the Constitution of the *English* Church only: *Ordericus Vitalis, Folio* 552. gives us a remarkable Instance out of *Normandy* of the same platform there.

Rex Guillielmus *in Festo* Pentecostes *Anno ab Incarnatione Domini* 1080. *apud Illebonam resedit, ibiq;* Gulielmum *Archiepiscopum*

epiſcopum & omnes Epiſcopos & Abbates Comiteſq; cum aliis Proceribus Normanniæ *ſimul adeſſe præcepit: ut Rex juſſit factum eſt. Igitur* 8. *Anno Papatus Domini* Gregorii *Papæ* 7. *Celebre Concilium apud Fullam bonam Celebratum eſt. Et* de Statu Eccleſiæ Dei *totiuſq; Regni Providente Rege cum* Baronum ſuorum conſilio *utiliter tractatum eſt.* Then he inſerts the Laws made there, all concerning Eccleſiaſtical Matters.

In the next Reign, that of King *William Rufus*, there was a Schiſm in the Popedom between *Clement* and *Urban: Anſelme* whilſt he was Abbot of *Bec* in *Normandy*, had Sworn Obedience to *Urban*: and being Elected Archbiſhop of *Canterbury*, deſired leave to go out of the Realm to fetch his *Pall* from him. This the King oppoſed (for that *Urban* had not been received for *Pope* in *England*) and told the Archbiſhop, he could not keep his Fealty to him (his Prince) ſaving the Obedience, which he owed to *Urban*. *Anſelme* upon this referred himſelf to the Judgment of the *Archbiſhops*, *Biſhops*, *Præcetes*, &c. in Parliament, who accordingly were Convened at *Rochingham*, *Ex Regia Sanctione*; and the matter diſ-

discussed before them. If the *Archbishop* had had any Notion of a *Personal Supremacy* in the *King*, separate from, and independant of the *Great Council of the Realm*, it had been absurd in him not to acquiesce in the *King*'s Judgment, but Appeal to a *Parliament*. If the *King* himself had been possessed with an opinion of any *Legislative or Supreme Judicial Power in Ecclesiastical Matters, lodged in his Person*, he would never have consented to call a *Parliament* to determine a cause which himself, as far as in him lay, had determined already. The History may be read at large in *Eadmer. Hist. Nov. Lib.* 2 *page* 24, 25, 26, &c.

In King *Henry* the First's time, *Anno Dom.* 1102. A Council was held at *London*, in which at *Anselm*'s request to the King, the *Laity* were present, *Quatenus quicquid ejusdem Concilii auctoritate decerneretur utriusq; Ordinis curâ & sollicitudine, ratum servaretur. Sic enim necesse erat. Quum multis retro annis Synodali cultura cessante, virtutum vepribus succrescentibus, Christianæ Religionis ferver in* Anglia *nimis tepuerat.* This is a clear Testimony that the *Assent* of the *Laity* was *necessary* to the

the Enacting such *Ecclesiastical Laws*, as they were to be bound by: And that neither the *King* by his *Prerogative*, nor the *King* and the *Clergy* could impose any Constitutions upon them without their *Assent*, *Eadmer. Histor. Nov. Lib.* 3. Will. Malmesb. *De Gest. Pontif. Anglor. Lib.* 1. *p.* 129.

But tho' the King could not make *Laws* Himself, could he not permit a *Legate* to exercise his Legatine Power here? King *Henry* the Eight indeed permitted *Wolsey* to exercise his Office here, and afterward brought the whole *Clergy* under a *Premunire* for submitting to him, and owning his Authority. But the Statutes of *Præmunire* were then in being. Could not our ancient Kings, that Reigned before any Act of Parliament now upon Record was extant, they that must needs have had *all the inherent Prerogatives that are involved in the Notion of Imperial Soveraignty*, they that understood their power somewhat better perhaps than it is now understood, because they lived nearer to the creation of it, and exercised it before it was sophisticated; could not they (I say) by vertue of their *Ecclesiastical Supremacy*, permit the

Doctor *Hicks.*

Popes

Popes *Legate* to domineer a while within the Realm? Why, King *Henry* the First was very well satisfied that himself had no such power: For when *Petrus Monachus Cluniacensis* was sent hither by *Calixtus* the Pope, to exercise his Office of *Legate* within this Realm, the King would not suffer him so much as to Lodg upon the Road in any Religious House: And when he came into his presence, and had told him his Errand, *Rex obtensâ expeditione, in quâ tunc erat (nam super* Walenses *eâ tempestate exercitum duxerat) dixit se tanto negotio operam tunc quidem dare non posse, cum Legationis illius stabilem authoritatem non, nisi per conniventiam* Episcoporum, Abbatum & Procerum ac totius Regni Conventum *roborari posse constaret.* *Eadmer Hist. Nov. p.* 138. And so the *Legate* went back as he came. He tells it him as a known truth (*Constaret*) that the giving him leave to exercise his Office here, was too great a work for him to go about (as his affairs then stood) for that it could not be done, but in and by the *Parliament*. If the *Parliament* had not a share in the *Ecclesiastical Jurisdiction*, how came their *Assent* to be necessary? If they had, when did

So *Anno Dom.* 1225. *Magister* Otto, *Domini Papæ nuncius, in* Angliam *veniens, promagnit Ecclesiæ* Rom. *negotiis, Regi literas præsentavit, sed Rex cognito literarum tenore, Respondit, quod solus non potuit definire, nec debuit, negotium quod omnes Clericos & laicos totius Regni tangebat.* Matth. Paris. *p.* 325.

did they lose it? If the *King*'s *Supremacy* was *personal*, why might not he (if he would) have licensed him himself? If it was not *personal* then, but is so now; then do not assert over and over that the late Acts of *Restitution* are all *declarative*, and give no *new* power. If the *Pope*'s *power* de facto *exercised*, be translated to the King, shew the conveyance.

This same King in a Letter to Pope *Paschall* about *Investitures*, tells him that if himself should be so mean (*in tantâ me dejectione ponerem*) as to part with them, yet *Optimates mei, imò totius* Angliæ *Populus id nullo modo pateretur. Decem Scriptores* 999. The *Investitures* were performed by the King in person, but subsequent to an Election by the *Parliament*; and yet the *Parliament* were so concerned in them, that they were not, nor could be parted with, but by an *Act of Parliament*: Which accordingly ensued, notwithstanding the *King*'s resolutenes at first; for when *Anselme* came from *Rome*, the *King* was perswaded to with-draw his claim, and it was granted in a *Parliament* held at *London*; *Astantibus Archiepiscopis, cæteraq; multitudine maximâ*

Pro-

Procerum & Magnatum, ut ab eo tempore in antea nullus electus per traditionem Baculi paſtoralis vel Annuli de Epiſcopatu vel Abbathia inveſtiretur per Regem vel aliam quamcunq; perſonam ſecularem. *Ibid. Et Sim. Mon. Dun.* 228, 229, 230.

But tho' *Inveſtitures* were loſt, *Elections* remained as they were (at leaſt of right) till King *John*'s time. See Preſidents of many *Biſhops* and *Abbots* Elected in Parliament in the Reigns of King *Stephen* and King *Henry* the Second. In *Spelm. Conc. Secund. Part.* p. 42 & 119.

Conceſſit Rex Johannes *libertas in omnibus Eccleſiæ* Anglicanæ *electionis*, Matth. Par. p. 262, 263. The Charter it ſelf, which was certainly an Act of Parliament.

Innumerable are the inſtances of *Canons* and *Conſtitutions* made in the Reigns of the firſt *Norman Kings* in their *Great* and *General Councils*, concerning *Churchmen* and *Church Matters*: Which any one may have recourſe to in *Spelm. Concil. Eadmer. Hiſt.* Mat. Paris, *and others.*

In the beginning of King *Henry* the Second's Reign, there was another Schiſm in the Popedom between *Alexander* and *Victor*, upon which a *great Council* of *Clergy* and *Laity* out of the Kingdoms of *England* and *France* met to determine, whether of the two ſhould

be acknowledged *Pope* within those Realms. The matter was debated in *Conſpectu Regum & Prælulum, coram universâ, quæ convenerat, multitudine Cleri & Populi.* And *Alexander* was received for *Pope*, and the Schismaticks *Excommunicated.* The History is in *Nubrig. Lib.* 2. *c.* 9.

Pursuant to which President, when there hapned in King *Richard* the Second's time to be another Schism in the *Papacy*, an *Act of Parliament* was made, to declare who should be received *Pope* in *England*, and a Law made for punishing any of the *Clergy* that should acknowledge the other *Pope*. *Vide Cott. Records, Ann.* 2. *Rich.* 2. *p.* 1 &c.

What thing can be more purely *Eccleſiaſtical*, than the determining who is lawfully chosen to be the *Universal Bishop?* And yet neither the *King*, nor *the King and the Clergy* would settle the point without the *Laity*.

By what has been said it appears, That the *Ancient Supremacy* of the Kings of *England* in *Eccleſiaſtical Matters*, was a very different thing, not so much from what it is now by *Law*, as from what it is apprehended to be by many amongst us. The Error is fundamental, and con-

consists in ascribing Things, Acts, Powers, &c. to the King in person, which belonged to, were done and exercised by him no otherwise, than in *his Courts*. *Appeals* are said to have been to the *King* at *Common Law*: And so an *Abridgment of Law* has it; so *Fox*, *Speed*, and others. And the Authority quoted is the Assize of *Clarendon*, which in one *Chapter* directs that *Appeals* shall be from the *Bishop* to the *Archbishop*; from the *Archbishop* to the *King*.

Rolls, *cap.* 8. *vid. Chron. Gerv. p.* 1387.

But another *Act of Parliament* made about 12 years after clears the matter. For in the mean time *Becket* was Murdered, and King *Henry* the Second being put to hard Pennance for it, part of his satisfaction was, that he should agree not to hinder *Appeals to* Rome *in Causes Ecclesiastical*, yet so as the party going was to give Security that he would not endeavour *Malum Regis nec Regni*. But within Four Years after, the Nation Assembled in *Parliament* would not quit their interest; But the *Assize* of *Clarendon* was again renewed, and a more close expression used concerning *Appeals*, and such persons as had prosecuted any; *Justitia*

Sir *Roger Twisden*.

Mat. Paris p. 126.

faciant quærere per consuetudinem terræ, illos qui à Regno recesserunt, & nisi redire voluerint infra terminum nominatum, & stare Juri in Curiâ Domini Regis, utlagentur, &c. This *Gervas. Dorobern.* (who well understood it) tells us, was but renewing the *Assize* of *Clarendon*: *Rex Angliæ* Henricus, *convocatis Regni Primoribus apud* Northamptoniam, *renovavit Assizam de* Clarendon. Here we see, that such as were aggrieved by a Sentence given by the *Archbishop*, were, pursuant to the Statutes of *Clarendon*, not to appeal to *Rome*, but to the *King*: Which the Statute of *Northampton*, made but twelve years after, explains to be to the *Curia Regis*.

By this, and by what has been said before upon this Subject, it appears, that the ultimate *Appeal* in Causes *Ecclesiastical* as well as *Temporal*, was to the *Curia Regis* or *Parliament*; and that, as the same Assemblies made Laws both for the Government of *Church* and *State*, so the *Supreme* Judicature *Ecclesiastical* and *Temporal*, was one and the same.

After that time *Appeals* were sometimes prosecuted in the Court of *Rome*, that Statute and the Assize of *Clarendon* notwithstanding; but this was only by

conni-

connivance. At last, when the Pope got the better of King *John*, who lay under great Disadvantages, as all our Historians tell us; and that in his *Magna Charta* these words were inserted: *Liceat unicuique de cætero exire de Regno nostro, & redire salvò & securè per terram & aquam, salvâ fide nostra*, &c. Then *Appeals* to *Rome* multiplyed for every little Cause, and the Master-piece of Papal Encroachments was wrought effectually. V. *Matth. Paris.* Pag. 258.

But it cannot be too often inculcated, that the Laws of *Clarendon* which gave the ultimate *Appeal* to the *Curia Regis*, as aforesaid, are so often stiled the *Avitæ Consuetudines Regni*: Which shews sufficiently where the *Supreme Judicature* resided, according to our old Constitution.

It appears by what has been said, that King *William* the Conqueror was acknowledged to be *God's Vicar*, appointed to govern his *Church*; and yet, that neither He nor his Successors pretended to make any *Ecclesiastical Laws* to bind the whole Kingdom, but in a *General Council* of the Kingdom: That the King's *Supremacy* was so far from being *Personal*, that an Archbishop did as

it were, *appeal* from himself in *Person* to himself in *Parliament*, and that the *King* submitted and owned the Jurisdiction: That the same Archbishop understood the Law to be, that the *Assent* of the *Laity* was necessary to the making of *Ecclesiastical Laws*, by which they were to be bound: That the *King* could not of his own Authority, permit a *Legate* to exercise his Office within the Realm: That leave to exercise his Office could not be given him but in *Parliament*: That the *King* could not part with *Investitures* if he would, without the *Assent* of the *People*: That *Parliaments* determined, who ought to be received as *Pope* within the Realm: That *Appeals* were to the *Curia Regis*, by the *Avitæ Consuetudines Regni*: And that *Bishops* were elected in *Parliament*. Whence I conclude, that a *Personal Supremacy* has no warrant from *Antiquity*.

The clearing the *Antient Supremacy* and stating the *Matter* aright, is of great use in this present Age; in which, as one sort of Men over-stock us with *Jure Divino's*, so the *Lawyers* accost us often with the *Common Law*, and the *King's Perogative* at *Common Law*; and

that

that this and the other *Act* is but *declarative* of the *Common Law*, and gives the King no *new* Power. And yet, as the *Divines* have little or no ground for their *Jure Divino's*; no more have the *Lawyers* in thoſe Matters of the *Supremacy*, any thing to warrant their late *Hyperbole's*, but Shadows and Imaginations: They found a Power exerciſed by the *Pope*, which they had good reaſon to think injurious to the *Crown*; they had heard, that *from the beginning it was not ſo*: And thus far they were right. But how it was exerciſed before the Court of *Rome* and the *Clergy* invaded it, they had forgot; It having been uſurpt upon Four hundred years before they were born. For it is in vain to look for a true Scheme of the *Antient Legal Supremacy* at a nearer diſtance than from the Reigns of King *John*, King *Richard* the Firſt, King *Henry* the Second, King *Stephen*, and ſo backwards. And yet we find no Reſolutions concerning what the *Supremacy at Common Law* was, and wherein it conſiſted, grounded upon Authorities of thoſe Times, which only can afford a right *Idea* of it: Nor indeed can any thing

be found in our Old Books of Law, as *Bracton*, *Glanvil*, *Britton*, *Fleta*, the *Mirrour*, nor in the *Antient Histories* of those Times, that warrants such an *Ecclesiastical Supremacy* in the Crown as we now a-days dream of; no *Supremacy* in *Ecclesiastical Matters*, other than in *Temporal* (which in a Nation of *Saxon* descent, could never exclude the *Ordines Regni*) having ever entred into the thoughts of Man, as lodged in the *King's Person*, or any *Temporal* Prince. The *Pope* pretended to it, (but our *Kings* never did:) Only where the Constitutions of *Clarendon* mention *Appeals* from the *Archbishop* to the *King*, they take up with the Letter, and examine no farther: As some *Philosophers* have ascribed *Phænomena in Nature*, which they could give no rational Account of, to occult Qualities; so the Lawyers resolve puzling Questions, by telling us Magisterially, that so and so it was at the *Common Law*, as occult in these Matters to many of them, as any Secret of Nature to the Philosophers.

That Branch of 1° *Eliz.* which unites *Ecclesiastical Jurisdiction* to the *Crown*, appears by the Journal of the House

House of Lords to be in the sense of the *Parliament*, that past it but *Declarative*: But that all other Acts and Clauses of Acts which were pass'd at the time of the Reformation, with respect to the *Ecclesiastical Jurisdiction* are so too, I can't believe, till I see Authorities of *Antiquity* proving it. V. Sir Simon Dewes.

Those particular Branches of the *Supremacy*, concerning the making of *Bishops*, *Appeals*, &c. with some *Temporary Laws*, now expired, as they were guided and limited by positive Laws made in King *Henry* the Eighths time, and King *Edward*'s, and revived in Queen *Elizabeth*'s; so they are grounded upon those Laws only, and have no other Foundation, so far forth as they are *Personal*. For the *Antient* and *Legal Supremacy* having been so long overshadowed, as to be almost forgot, they did not upon the Restitution of it, return all things to their former estate. They prescribed another course for *Appeals*, than had ever been known in our *Law* before: They did not resume the Elections of *Bishops* to the *Parliament*, who had had them formerly, but leaving a shew of an *Election* in the *Consistory*, they authorize the *King* to name the Man. The

power

power of making *Laws* and *Conſtitutions Eccleſiaſtical* for the Government of the whole Kingdom, we find no Reſumption of, no declarative Act concerning it, other than in the Recital of 25 *Hen.* 8. *cap.* 21. For that Point had never been gained from them.

From the Reign of King *Henry* the Second downward, to King *Henry* the Eighth, we find little or nothing of any *Canons* and *Conſtitutions* for the Government of the *Church*, made with *aſſent* of the *Laity*: For the *Clergy* had now eſtabliſhed their *Exemption*, and had ſet up *Imperium in Imperio*: But many Acts we meet with, ſetting Bounds to their Encroachments, and limiting their Juriſdiction, and all made by the ſame Authority that enacted the *Temporal Laws* of the Kingdom: And therefore the *Supremacy*, ſo far forth as it remained in the *Crown*, was not *Perſonal*, but exerted it ſelf in the Legiſlative Body of the Kingdom. For the *Parliaments*, tho in a great meaſure *Anti-Chriſt-ridden*, did not even in theſe Times, ſo far forget the old Conſtitution, as to let the *Church* and *Religion* run adrift for all them, and be wholly managed either by

the

the *King* or their *Ghoſtly Fathers*.

The Writs of *Summons* to *Parliaments* both antient and modern, have this ſpecial Clauſe in them: *Pro quibuſdam arduis & urgentibus negotiis, nos, Statum & defenſionem Regni Angliæ & Eccleſiæ Anglicanæ concernentibus, quoddam Parliamentum*, &c. So that the State of the *Church* is as properly within the care of a *Parliament*, as the State of the *Realm*. And in the Prologues to moſt Acts of Parliaments, the *Honour*, the *Profit*, the *Reverence*, the *Benefit*, the *Advancement* of *Holy Church*, is mentioned, as the End of their Meeting, no leſs than the Safety and Defence of the Realm.

Accordingly innumerable *Acts* of *Parliament* were made, and are now in print, concerning *Church-men*, the *Eccleſiaſtical Juriſdiction*, *Matters* of *Religion*, &c. As the Statutes of *Mortmain*, *Circumſpecte agatis*, the Statute upon the Writ of *Conſultation*, *Articuli Cleri*, ſeveral Statutes entituled *Pro Clero*, the Statutes of *Premunire* and *Proviſors*, concerning *Prieſts* and *Salaries*, againſt *Appeals* to *Rome*, prohibiting *Biſhops* to meddle in *Matters*

ters of the *Peace*, removing *Bishops* from *Temporal Offices*, restraining the *Popes* Exactions and Usurpations, and Encroachments of the *Canons* upon the *Civil Jurisdiction*, freeing *Clergy Men* from Arrests during the time of *Divine Service*, for the Instruction of the *People* by *Preaching*, concerning *Priors* dative and removable, &c. Exempting of *Pilgrims* from the *Punishment of Vagrants*, Hunting on *Holy-days*, *Consecrations of Church-yards*, and *Appropriations of Churches and Alms*, concerning *Provisions* of *Exemptions* from *regular or ordinary Obedience* granted to *Religious Persons* from *Rome*, the Suppression of *Sectaries*, *Heretical Books*, *Schools*, *Working on Holy-days*, *Entring* into *Religion* without Consent of *Parents*, *Tythes*, *Chalices*, *Ornaments of the Church*, &c. So that whatever remained of the *Supremacy*, remained in the Legislative Body of the Kingdom, and was there exerted.

During this time the question was not, Whether the *King* could by his *Prerogative* impose *Laws* upon the *Clergy*, or in concurrence with the *Clergy* conclude the *Laity* (these are Notions started up since the *Reformation*,

on, which has *brought to light in Politicks*, as well as Religion, *Myſteries that had been hid from Ages*) but whether the *Spirituality* or *State Eccleſiaſtical*, of whom the *Pope* was now *de facto* the Head, could bind the *Laity*, without their *Aſſent in Parliament*.

This was a *fifth* Encroachment, which was attempted by introducing the *Canon Law*, and drawing to themſelves by a ſide wind all *Temporal* Juriſdiction *in ordine ad Spiritualia*. But the deſign was never brought to perfection; ſuch was the *Genius* of a Government built upon this noble Foundation, that *no man ought to be bound by a Law that he does not conſent to*, that muffled up in Darkneſs and Superſtition, as our Anceſtors were, yet that Notion ſeemed to be engraven in their Nature, born with them, ſucked in with their Mothers Milk; the impreſſion was ſo ſtrong, that nothing could deface it: Accordingly we often find them *proteſting* that this and the other thing did not bind them, becauſe it was done *without their Aſſent*; that they would not be bound by any Ordinances of the *Clergy*, without their *Aſſent*: That they would not ſubject them-

Rott. Par. 40. *Edw.* 3. *nu.* 7. 8. Rott. Parl. 5 *Ed.* 3. *art.* 46. Rott. Parl. 6 *Rich.* 2. *nu.* 62.

themſelves to the *Prelates*, no more than their Anceſtors had done. And in the 25. *H.* 8. *cap.* 21. They tell the King, *That this his Grace's Realm, recogniſing no Superiour under God but only his Grace, hath been and is free from ſubjection to any Man's Laws, but only to ſuch as have been deviſed, made and ordained within this Realm, for the wealth of the ſame, or to ſuch other, as by ſufferance of your Grace and your Progenitors, the People of this your Realm have taken at their free Liberty, by their own conſent, to be uſed amongſt them, and have bound themſelves by long uſe and cuſtom to the obſervance of the ſame, not as to the Laws of any foreign Prince, Potentate, or Prelate, but as to the acuſtomed and ancient Laws of this Realm, originally eſtabliſht as Laws of the ſame, by the ſaid ſufferance, conſent, and cuſtom, and none otherwiſe.* By thoſe *other Laws*, not ordained within the Realm, they mean the *Canon Law*. For the *Clergy* extended the bounds of it daily, and always got ground. But the *Sufferance* and *Conſent* here ſpoken of, was not a bare tacit Submiſſion to it by the People, but a *Conſent in Parliament*: Where they not only received foreign

foreign *Canons* into the body of our Municipal Laws, but also from time to time came to a Compromise with the *Clergy*, with respect to several Matters, of which the *Clergy* claimed Cognisance, as appertaining to what they called *Spiritual Jurisdiction*, First (For our Records of Parliament, yet extant, go no higher) by the Statute *De Circumspecte agatis*, but that would not satisfie them. In King *Edward* the Second's time they got Jurisdiction in many other Causes, as you may see in the Statute of *Articuli Cleri*. And in King *Edward* the Third's time they went yet further; Nine new Points were gained, 25 *Edw.* 3. by the *Statutum pro Clero*. The Conusance of these Matters, which by these Statutes were left to the *Clergy*, belonged before to the *King's Courts*, as part of the *Common Law* of the Realm, by which the *King* governed his People, and which he administred in his ordinary Courts of Justice, and by the ordinary proceedings of Law. And therefore before they were allowed to the Cognisance of the *Ecclesiastical* Courts by Act of Parliament, *Prohibitions* were granted.

* The

* The King's Right of Indulgence, *page* 28.

* The granting of *Prohibitions* in these Cases, is urged by a *late Author*, as an instance of the King's *Ancient Supremacy*, and urged amongst other things, to prove a right in the *King's* Person to dispense with *Civil Laws* about *Ecclesiastical* Matters. Whereas *Prohibitions* were granted then, no otherwise than as they are now, to *Spiritual* and other Courts, when they exceed the bounds of their Jurisdiction. When the *Spiritual* Jurisdiction broke in upon the *Temporal*, and the *Ecclesiastical* Courts assum'd an Authority in Cases not allowed by the Laws of the Realm, to be within their *Cognisance*, this was an Offence against the *King's Crown and Regality* (as the Statutes of *Premunire* run) and *Contra Coronam & Dignitatem Regis*, as the forms of some *Prohibitions* in the *Register* run, and yet the *Kings Temporal Jurisdiction* was not *perfect*.

In this period of time it was that *Dispensations* brake forth. They began in King *Henry* the Third's time, which is not old enough to give the *Crown* a title to them by *Prescription*; for it is within the *time of Memory*. The History of their Nativity may be read in *Matth.*

Matth. Paris. The *Pope* led up the Dance, taking upon him by *Non Obſtante's* to revoke his own Grants, and to diſpenſe with the *Canons* upon a pretence of ſome *plenitudo poteſtatis* or other, derived to him, as *Paſtor* of the *Univerſal Church* by Succeſſion from St. *Peter.* And Secular Princes Writ after his Copy in taking upon them to diſpence with their own Penal Laws. Which before were religiouſly obſerved as the Laws of the *Medes and Perſians*, which could not be diſpenſed with. And therefore a *Canoniſt* ſays that *Diſpenſatio vulnerat jus commune.* And another ſays that all Abuſes would be reformed, *Si duo tantum verba, viz.* Non Obſtante, *non impedirent.* And *Matthew Paris, Anno Dom.* 1246. having recited certain Decrees made in the Council of *Lyons*, which were beneficial to the Church of *England*, *Sed omnia hæc & alia* (ſays he) *per hoc repagulum, Non Obſtante, infirmantur, Dav. Rep.* 69, 70. &c. Secular Princes, it ſeems, had not learnt that part of their *Prerogative*, till they were taught it by their *Ghoſtly Father.* Nor could they well have any notion of it, ſince as Sir *Henry Spelman* tells us in his *Gloſſary*, *tit. Aſſiſa, Reges &*

Sir *John Davies* Caſe, *De Commenda.*

Proceres in condendis Legibus earum olim jurabant observantiam. Hence *Bracton* calls the Laws of *England Leges Juratas.* Now the taking of an Oath to observe them, and the being allowed a power by Law to break them, seem to me very inconsistent things. It's observable to this purpose what *Bracton* tells us concerning the Laws of *England, Legis vigorem habet quicquid de Consilio & Consensu Magnatum & Reipublicæ Communi sponsione, authoritate Regis sive Principis præcedente, justè fuerit definitum & approbatum.* So that a Statute of the Kingdom of *England* is an Agreement betwixt all parties concerned: Which for any one of them to set aside, is against Natural Reason.

And *Fortescue* who was *Lord High Chancellor of England* in the Reign of King *Henry* the Sixth, cannot be supposed to have known of any such *Prerogative* in the *King*, by the account that he gives us of the Solemnity of Enacting Laws here in *England*, and of the course that was to be taken when any of them were found by Experience to be inconvenient. *Statuta tunc Angliæ bona sunt necne, solum restat explorandum. Non enim emanant illa Principis solùm voluntate, ut Leges in Regnis, quæ Re-*

Pag. 39, 40.

Regaliter tantum gubernantur, ubi quandoq; Statuta ità conſtituentis procurant commodum ſingulare, quod in ejus ſubditorum ipſa redundant diſpendium, & jacturam. Quandoq; enim inadvertentiâ Principum hujuſmodi, & ſibi conſulentium inertiâ, ipſa tam inconſultè eduntur, quòd corruptelarum potiùs quàm Legum nomina mereantur. Sed non ſic Angliæ *Statuta oriri poſſunt, dum nedum Principis voluntate, ſed* & totius Regni aſſenſu ipſa conduntur, *quo Populi læſuram illa efficere nequeunt, vel non eorum commodum procurare. Prudentiâ enim & Sapientiâ neceſſariò ipſa eſſe referta putandum eſt, dum non unius, aut centum ſolùm conſultorum virorum prudentiâ, ſed pluſquam trecentorum electorum hominum, quali numero olim Senatus Romanorum regebatur, ipſa edita ſunt. Et ſi Statuta hæc tanta ſolemnitate & prudentia edita, efficaciæ tantæ, quantæ conditorum cupiebat intentio, non eſſe contingant*; concito reformari ipſa poſſunt, & non ſine Communitatis & Procerum Regni illius aſſenſu, *quali ipſa primitùs emanarunt.* A Power in the *Prince* to *ſuſpend Laws* by whole-ſale, is altogether needleſs in a Conſtitution wherein *Concitò reformari poſſunt*, by the ſame Authority that

made them. In Forty days time a *Parliament* may be ſummoned to conſent to what alteration they ſhall think fit to be made. And it is the conſtant practice obſerved to this day, that at the beginning of every *Parliament* a *Committee* is appointed, to conſider what *Laws* are inconvenient, and have need to be altered, continued or repealed. If the *Parliament* ſhall not think fit to make any alteration, the Laws muſt remain in force, and ought to be put in execution, for there can be no Reformation of them made *Sine Communitatis & Procerum aſſenſu.* And the reaſon is, becauſe by ſuch aſſent *Primitus emanârant.* The *Repealing* of a *Law*, or, which is all one, a *total Suſpenſion* of a Law, is making a *new Law*, whatever quibbles and fooliſh diſtinctions may be pretended to be made in the Caſe. Now the Laws of *England* do not *oriri Principis voluntate*, and therefore a *Repeal* or total *Suſpenſion* of a Law grounded upon the *voluntas Principis* only, is not warranted by that model of the *Engliſh Government*, that *Forteſcue* preſents us with. He that aſſerts ſuch a Power in the King to *Suſpend Laws* Enacted by the *Conſent of the whole Kingdom*, turns the

the Government of this Nation topſie turvie: And makes the Laws of *England* indeed *the King's Laws*; contrary to the ſtyle of all Antiquity, of all Hiſtory, and contrary to the forms of Legal Proceedings even to this day; *Lex terræ*, and *Leges terræ*, *Leges & Conſuetudines* Angliæ, *Leges* Angliæ, *Statuta* Angliæ, *& Aſſiza Regni*, are known and common Expreſſions: *Leges Regis* ſounds harſh: the phraſe is uncouth, becauſe the Notion included in it, is falſe; nor was ever thought of by our Forefathers.

Lord Chief Juſtice *Herbert* in Sir *Edward Hales* his Caſe.

The Statutes of *Præmunire* and *Proviſors*, and the method of *diſpenſing* with them before the *Reformation*, will abundantly diſcloſe to us where the power of *diſpenſing* with *Acts of Parliament*, even in *Eccleſiaſtical Matters*, was veſted. In the 16*th* Year of King *Richard the Second*, *the Archbiſhop of* Canterbury *declared the Cauſes of the Parliament: The ſecond of which was, to provide ſome remedy touching the Statute of Proviſors, for eſchewing debate betwixt the Pope and the King, and his Parliament*, Cot. Records, *p.* 346.

King *Richard* needed not have put himſelf to the trouble of convening his *Parliament*, in order to provide a Remedy in ſuch caſe, if by the Law, as it was then underſtood, he might by his *Perogative* have diſpenſed with the Statutes of *Proviſors*, and all other Laws concerning *Eccleſiaſtical Matters*. In the *17th. R.* 2. It was enacted in Parliament, that *Tydeman*, late Abbot of *Beawliew* and Elect of *Landaffe*, by the *Popes Proviſion*, ſhould enjoy the ſame *Biſhoprick*, notwithſtanding any Act, *ſo always as this be taken for no Example.* Ibid. p. 354. So that tho *Tydeman* had a Diſpenſation from the King, he durſt not truſt to it, without getting his Title to his *Abby* confirmed in *Parliament*. The like Preſident occurs in 18 *H.* 6. The Archbiſhop of *Roan* had the Profits of the Biſhoprick of *Ely* granted to him by the *Pope*, and confirmed in *Parliament*. Ibid. p. 623. But in the Fifteenth year of King *Richard* the Second, the Commons for the great Affiance which they repoſed in the King, granted, that the King by the Advice of his Lords, might make ſuch Toleration touching the *Statute* of *Proviſion*, as to him ſhould ſeem good until the next Parliament,

Parliament, *ſo as the Statute be repealed in no Article thereof*, nor none diſturbed of his lawful *Poſſeſſion*: So alſo, as they may diſagree thereto at the next Parliament, with this Proteſtation, That this their Aſſent *being in truth* a *Novelty*, be had or taken for no Example. *Ibid. p.* 342. And in the Sixteenth year of the ſame King, the Commons grant to the *King*, that he, by the Advice of his Lords, ſhould have power to moderate the Statute of *Proviſions*, to the Honour of God, and ſaving the *Rights* of the *Crown*, and to put the ſame in execution, ſo as the ſame be declared in the next *Parliament*, to the end the *Commons* may then agree to the ſame or no. *Ibid. pag.* 347. The occaſions of theſe Conceſſions were the then circumſtances of the Kings Affairs, who was often at enmity with *France*, and made advantage of the *Pope*'s Friendſhip, which he obtained by this, and other Methods of the like kind. The like Inſtances occur in the ſame Collection, *p.* 362, In the Twentieth year of the ſame King. *p.* 393, In the Firſt year of King *Henry* the Fourth. *p.* 406, In the Second year of King *Henry* the Fourth.

From hence it appears, that those Times had no notion of any absolute *Power*, any inseparable *Perogative* in the King himself of *dispensing* with those *Laws* without his *Parliaments* consent: For *they grant* the King such Power, and that but *for a time, and so as they may disagree to it at their next Meeting*, and with *a protestation that this their Assent be not drawn into Example*, and declare their giving the *King* such Power to be a *Novelty*: And all this they do with a saving to the *Rights* of the *Crown*; which let them (if they can) explain the meaning of, who imagine that the *uniting of Ecclesiastical Jurisdiction to the Crown of* England, by the Statute of 1 *Eliz.* is a vesting of it in the *King*'s *Person*.

In this same interval of Time, the Statutes of *Præmunire* were enacted, *viz.* 27 *Edw.* 3. *cap.* 1. and 38 *Edw.* 3. *cap.* 1. 16 *R.* 2. and some others, with which how far it was lawful for the *King* to *dispense*, take an account from what hapned to Cardinal *Wolsey* in King *Henry* the Eighths time. He had a Commission from the *Pope* to exercise his Office of *Legate* here in *England*; he had the *King*'s leave so to do; he exercised

ciſed that Office many years without controul, and was ſubmitted to almoſt univerſally. I remember but one Obſtruction offered to have been made to him, and that was by *Hunne* a *Merchant-Taylor* in *London*. The Hiſtory of which may be read at large in *Fox*, and Dr. *Burnet*'s *Hiſtory of the Reformation*: And yet the whole *Clergy* were afterwards attainted of a *Præmunire* for ſubmitting to ſuch *Foreign Authority*, as the ſame Authors, the Lord *Herbert*, and others abundantly teſtifie. But *Stephen Gardiner*'s Letter to the Duke of *Somerſet* concerning that Matter, as it is very remarkable for many other Paſſages, ſo this enſuing part I think proper to be here inſerted, becauſe it will ſave me the trouble of relating the Hiſtory, and of endeavouring to open the Reaſons of that Proceeding. 'Now whether the '*King may command againſt an Act of Par-*'*liament*, and what Danger they may 'fall in that *break a Law with the King*'s '*conſent*? I dare ſay, no Man alive at 'this day, hath had more Experience 'with the Judges and Lawyers than I: 'Firſt I had experience in my old Maſter 'the *Cardinal*, who obtained his Legacy 'by our late Sovereign Lord's requeſt at

'*Rome*,

'*Rome*, and in his ſight and knowledge,
'occupied the ſame with his two Croſſes
'and Maſſes born before him many
'years; yet, becauſe it was *againſt the*
'*Laws of the Realm*, the Judges conclud-
'ed it the Offence of the *Præmunire*,
'which concluſion I bare away, and take
'it for the Law of the Realm, becauſe
'the Lawyers ſo ſaid, but my Reaſon
'digeſted it not. The Lawyers for con-
'firmation of their Doings, brought
'in a Caſe of the Lord *Tiptoft*, as I re-
'member, a jolly *Civilian*; he was
'Chancellor to the *King*, who (becauſe
'*in the Execution of the King's Commiſ-*
'*ſion he had offended the Laws of the*
'*Realm*, he ſuffered on *Tower-Hill*,)
'they brought in many Examples of ma-
'ny Judges that had Fines ſet on their
'Heads in like Caſes, *for doing againſt*
'*the Laws of the Realm by the King's*
'*Commandment*, and then was brought
'in the *Judge's Oath, not to ſtay any Pro-*
'*ceſs or Judgment for any Commandment*
'*from the King's Majeſty*: And one Ar-
'ticle againſt my Lord *Cardinal* was,
'that he had granted *Injunctions* to ſtay
'the *Common Law*, and upon that occa-
'ſion *Magna Charta* was ſpoken of, and
'it was made a great matter *the ſtay of*
'*the*

'*the Common Law*; and this I learned in 'that Caſe, ſithence that time being of 'the Council, when many *Proclamati-* '*ons* were deviſed againſt the Carriers 'out of Corn; at ſuch time as the Tranſ- 'greſſors ſhould be puniſhed, the Judges 'would anſwer, It might not be by the '*Laws*, whereupon enſued the *Act of* '*Proclamations*, in the paſſing of which '*Act* many liberal Words were ſpoken, 'and a plain *Proviſo*, that *by Authority* '*of the Act for Proclamations, nothing* '*ſhould be made contrary to an Act of* '*Parliament or Common Law.*

A known and notorious Judgment has been lately given in favour of a *Diſpenſation*, with an *Act* of *Parliament*, in a cauſe of extraordinary great conſequence; and the Court grounded themſelves upon a Caſe pretended to have been adjudged in the *Second year of King* Henry *the Seventh*, concerning *Sheriffs*. It had been enacted by ſeveral Statutes, 'That no *Sheriff*, *Under-Sheriff*, &c. 'ſhould abide in his Office above one 'whole year, as by the 14 *Edw.* 3. *cap.* 7. 'and the 42 *Edw.* 3. *cap.* 9. And in King *Richard* the Second's time, it was enacted, 'That no Man who had been 'Sheriff of any County by one whole 'year,

Sir *Edward Hale's* Caſe.

'year, ſhould be another time choſen 'into the ſaid Office within three years 'enſuing, &c. Notwithſtanding which Statutes, the contrary was often practiſed by colour of *Diſpenſations* with thoſe Laws! Which *Diſpenſations* of what validity they were in Law in the Judgment of Parliaments, may be ſeen by divers Inſtances in *Cotton's Abridgment* of the *Records* of the *Tower*; ſome of which are very *untoward*.

V. *Cott. Abr.* p. 387. *Anno* 1. *H.* 4. One Artic. of Impeachment againſt King *Rich.* 2.

To obviate the miſchief of theſe *Non Obſtante's*, the Parliament in the Twenty Third year of King *Henry* the Sixth, enacts, 'That the ſaid Statutes 'above recited, ſhall be duly obſerved, 'and inflicts the Penalty of 200 *l.* upon 'any Sheriff, Under-Sheriff, &c. that 'ſhall hold the ſaid Office longer than 'a year: And farther enacts, That e-'very *Pardon* thereafter to be made for 'ſuch Offence, or Occupation, or for-'feiture of Sums before recited, ſhall be '*void*, and not available; and that all '*Patents* made, or to be made of any 'of the ſaid Offices, for term of Years, 'for term of Life, or in Fee Simple, or 'in Fee Tail, ſhall be *void*, and of no va-'lue by the ſame Authority; any Clauſe 'or Word of *Non Obſtante*, in any wiſe put,

'put, or to be put in any ſuch Patents 'notwithſtanding. And moreover, that 'whoſoever ſhall take upon him to have 'or occupy the ſaid Office of Sheriff by 'vertue of ſuch Grants or Patents, now 'to be made for term of Years, for term 'of Life, Fee Simple, or Fee Tail, ſhall 'ſtand for ever, and at all times diſabled 'to bear the Office of Sheriff within any 'County of *England*.

That that Statute was ever after looked on as a Law binding to the *King*, and reſtraining any *Non Obſtante's* in ſuch caſe for the future, will appear by conſidering ſome Statutes ſubſequent to the Law it ſelf, both before and after the pretended Judgment in 2 *H.* 7.

The firſt is that of 28 *Hen.* 6. *cap.* 3. Whereby it is *ordained and granted that the Sheriffs*, &c. *which were for the year laſt paſſed, ſhall be quit and diſcharged againſt our Soveraign Lord the King and all his Liege People, of the Penalties and Forfeitures of* 200 l. *which they or any of them might fall in, or incur by force of the ſaid Statute made in the* 23*d. Year of the ſaid King, as for the occupation or exerciſe of the Office of Sheriff longer than by a Year*, &c. So that ſuch Sheriffs

as

as had exercised their Office longer than a Year, contrary to the said *Statute of* 23 *Hen.* 6. could not be safe by any *Dispensation* granted by the *King*, without an *Act of Parliament* to indemnifie them against him and his People.

In the Eighth Year of King *Edw.* 4. *cap.* 4. the Parliament reciting the Statute of the 14*th* of King *Edward* 3. and of the 42 *of the said King* (above-mentioned) and that of the 23*th* of King *Hen.* 6. concerning *Sheriffs*, and that *contrary to the said Ordinances divers Sheriffs*, &c. *in the First, Second, and Third Years of the said King* Edward *the* 4*th. that then was, the Realm then being in great trouble, and the Peace not fully established, did occupy over a Year, the said King by Advice and Assent of the Lords Spiritual and Temporal, and at the Request of the Commons ordained and established, That no manner of persons being Sheriffs, Under-Sheriffs, &c. in the said Three first Years of his Reign or any space within the same for the occupation of the Office of Sheriff, &c. in the said Three Years, or any part or space within the same, or of the same, or any of the same above a Year, altho their Occupation were against the Ordinances above recited*

cited, be damnified nor in any wise hurt by any Action, Pain, or Forfeiture in the same Ordinances or any of them comprised, &c. *Yet nevertheless the said Ordinances, and every of them to remain in their strength and force against all Sheriffs, Under-Sheriffs,* &c. *for their occupation all other Years than the said Three Years as aforesaid.* If the King's *Pardon* could have saved them harmless, the Act of 26 *H.* 6. notwithstanding, which provided that all such Pardons should be void, then these Offenders had not need to have recourse to an Act of Parliament for their Security.

These two Laws subsequent to the said *Act of* 23 *H.* 6. *cap.* 8. and prior to the said pretenced Judgment of 2 *H.* 7. shew it to have been the Sense of the *Parliaments* and People of those times, that all *Pardons* and *Dispensations* with the said Statute were nullities in Law. Whether they received any further light as to the King's Prerogative in *Dispensing* with it, notwithstanding all the caution that the Wisdom of a Nation could use in such a case, from the pretended Opinion of the Judges in that Case we may guess at, by observing

ving the *Act of 6 H. 8. cap.* 18. Which Act, reciting the *Act of 13 Ed. 3.* and of the 23 *of King H. 6. and the Forfeitures and Penalties thereby impoſed, and that every Pardon for ſuch Offence ſhould be void, and all Patents with* Non Obſtante's *of the ſaid Statute void in like manner,* does yet *Enact, Eſtabliſh and Ordain, that the Under-Sheriffs, and other Officers of Sheriffs in the Shire of the Town of* Briſtol, *may continue to occupy their Offices in like manner as the Under-Sheriffs, and other Sheriffs Officers in* London *do, without any Penalty or Forfeiture for the ſame, the ſaid Acts or any other Act to the contrary notwithſtanding.*

By this *Act* it appears that in the Judgment of that *Parliament* a Patent to exerciſe the *Office* of *Sheriff* longer than a Year with a *Non Obſtante* of the *Statute of* 23 *Hen. 6. cap.* 8. was a Patent void *in Law:* For they recite the *Act*, not only as an *Act in force*, but that particular clauſe in it, whereby *Non Obſtante's* to it are declared to be *void*, as a reaſon why the Under-Sheriffs of *Briſtol* could not be ſafe in acting contrary thereunto; without *Aſſent of Parliament*, which was therefore had for their

ſecurity

Security, and would have been needleſs, if a *Patent* with a *Diſpenſation* had then been accounted legal.

Theſe *Acts* of *Parliament* might be thought ſufficient to invalidate the Authority of that *Judgment*, if any ſuch had been given; but the truth of it is, there never was any ſuch *Judgment* given, as that the *King* might by his *Perogative* diſpenſe with the ſaid Statute of 23 *Hen.* 6. by which it is expreſly enacted, That no *Non Obſtantes* in ſuch caſe ſhall be available. The Queſtion indeed was, upon the validity of a Grant made by King *Edward* the Fourth. of the Shrivalty of *Northumberland* to the Earl of that County, for his Life: And the Judges held the Patent to be good. But they did not ground their Judgment upon the *Non-Obſtante* therein; for there is not a word ſpoken of the *Non-Obſtante*, but by *Rocliffe* (who was then ſecond Baron of the Exchequer,) after the Court had agreed the Patent to be good, By reaſon of a *Proviſo* in an Act of *Reſumption*. But I ſhall forbear meddling any more with that Caſe, for that a very good Account of it will be ſhortly given by another Hand; as

alſo of the five Points pretended to have been agreed by the Judges in Sir *Edward Hales*'s Caſe, and a ſufficient Anſwer to that ſlight Pamphlet, entituled, *A ſhort Account of the Authorities in Law, upon which Judgment was given in Sir* Edward Hales's *Caſe: Written by Sir* Edward Herbert *in Vindication of himſelf.*

Indeed *Non Obſtante's*, as they were firſt invented and introduced by *Popes* between the years of our Lord 1200 and 1250, and afterwards inſerted into the *King's Patents* and *Proteſtions* in imitation of them by King *Henry* the Third; ſo they were never made uſe of by any of our Kings to elude *Acts* of *Parliament*, till after the Statute of *Mortmain*, which was made in the *7th.* of *Edw.* 1. Which firſt attempt, as it muſt needs be *illegal*, Firſt, becauſe contrary to *Magna Charta*, cap. 36. (which is the firſt Law that prohibits Alienations in *Mortmain*, and was not only ſworn to, when enacted and confirmed, but is alſo by many after *Acts* of *Parliament*, ordered to be obſerved in all *Points*, as by 2 *Edw.* 3. *cap.* 1. 4 *Edw.* 3. *cap* 1. 14 *Edw.* 3. *cap.* 1. and innumerable others.) Secondly, Becauſe when

V. *Matth. Paris. p.* 810, 811. *Ibid. p.* 817, 818. *p.* 854. *p.* 875.

when the Clergy petitioned King *Edward* the First, for a relaxation of it: His Answer was, that he could not do it, becauſe it was enacted *de Conſilio Magnatum ſuorum, & ſine eorum Conſilio non erat revocandum.* And Thirdly, Becauſe the ſole Act of the *King* could not with any colour of Reaſon prejudice the Rights and Intereſt of the *Meſne Lords*; yet ſuch was the miſguided Piety and Devotion of thoſe Times, that ſuch *Non Obſtante's* were obtained, as appears by the *Patent* and *Charter Rolls* in the *Tower*, from 8 *Edw.* 1. downwards, abounding with ſpecial Licences to purchaſe and hold Lands, &c. *Statuto de terris & tenementis in manum mortuam non ponendis non Obſtante.* And yet were not theſe *Licences* accounted *legal*, or the *Clergy* ſafe in purchaſing Lands, Rents, Advowſons, &c. by virtue of them, till it was enacted in Parliament, *Anno* 18 *Edw.* 3. *cap.* 3. *That if Prelates, Clerks beneficed, or Religious People, which have purchaſed Lands, and the ſame have put to Mortmain, be impeached upon the ſame before our Juſtices, and they ſhew our Charter of Licence and Proceſs thereupon, by an Inqueſt of* Ad quod damnum, *or of our Grace, or by*

Hen. Knighton, p. 2502. in *Dec. Script.*

Fine, they ſhall be freely let in Peace, without being further impeached for the ſame purchaſe: And in caſe they cannot ſufficiently ſhew, that they have entred by due Proceſs, after Licence to them granted in general or in ſpecial, that they ſhall well be received to make a convenient Fine for the ſame, and that the Enquiry of this Article ſhall wholly ceaſe, according to the accord comprized in this Parliament.

But *Non Obſtante's* with the Statute of *Mortmain*, having been introduced, as aforeſaid, tho undeniably illegal at firſt, and gaining afterwards a countenance from this *Act* of *Parliament*, have given occaſion to the *diſpenſing* with other *Acts* of *Parliament*.

Tho at firſt they were very rare, and ſeldom occur in the *Old Books*; and tho they are more frequent in the *New*, and that *Judges* and *Courts of Juſtice* have invented little Diſtinctions betwixt *malum in ſe* and *malum prohibitum*; betwixt *Laws* made *pro bono publico*, and *Laws* of a more private regard; betwixt *Laws* in which the *King's* Profit and Intereſt is concerned *only*, and *Laws* in which the *Subject* has an intereſt, and is intituled to an Action, as *pars gravata*;

ta; yet the Caſes that have hitherto come before them *judicially*, have been Queſtions upon Diſpenſations granted to particular *Perſons*, to exempt them *pro hîc & nunc*, from incurring the Penalty of ſuch or ſuch a *Law*. A *Diſpenſation* ſuſpending the Effect of a *Law* at once, has been ſo far from receiving any countenance from *Courts of Juſtice* hitherto, that it has always been a fatal Objection againſt any particular *Diſpenſation*, if it was ſuch as conſequentially quite eluded and fruſtrated the whole *Law*: For that ſuch a *Diſpenſation* is in effect a *Repeal* of the *Law*.

Thomas and *Sorell's* ct. of Wine-Licences.

It would be endleſs to launch out into a Diſcourſe upon ſuch particular *Diſpenſations* as have been granted, and either allowed or condemned: The principal Caſes in our *Modern Books*, in which the conceits of *latter times* are diſplay'd, are theſe following; *Coke's 8th. Report, the Princes Caſe. The Caſe of the City of* London. *11th. Report, the Caſe of the* Taylors *of* Ipſwich, *and the Caſe of* Monopolies. *Dyer*, 52. *a.* 54. *a.* 224. *b.* 270. *a.* 303. *a, b. Plo. Com. Grendon* againſt the Biſhop of *Lincoln. Vaughan's Reports*; *Thomas* and

Sorell's Case. V. *Roll's Abridgment*: Second Part, *p.* 179, 180. *Lett. I. Co. 12th. Report. p.* 18, 19. Sir *John Davie's Reports. Le Case de Commenda. p.* 68. &c. *Moor's Reports, p.* 244, 245, &c. *cs.* 384.

But how correſpondent the reaſon of ſome of theſe *Judgments* is to the ſenſe of former *Parliaments*, and conſequentially to the Judgment of the whole *Nation*, and the very Conſtitution of this *Government*, take a hint from a notable *Record* in the Fiftieth Year of King *Edward* the Third, whereby it appears, 'That *Richard Lyons* Merchant of *London*, was impeached and accuſed by 'the *Commons*, of many Deceits, Extor'tions, and other evil Deeds, commit'ted by him, againſt our Lord the *King* 'and his *People*, as well in the time that 'he had been belonging to the Houſe 'and Council of the *King* as otherwiſe, 'during the time that he was Farmer 'of the Subſidies and Cuſtoms of the '*King*; and more eſpecially, for that 'the ſaid *Richard*, by Covin had between 'him and ſome of the *Privy Council* of 'our Lord the *King*, for their ſingular 'Profit and Advantage, had procured 'and gotten many *Patents* and *Writs*

of

'of *Licence* to be made, to carry great 'Faith and Credit, whereby Skins, Wool 'and other Merchandizes, were tranſ-'ported otherwiſe than to the Staple 'of *Calice*, *againſt the Ordinances and* 'Defences made in that behalf concerning 'the ſame before time in Parliament. He was charged with other particular Crimes; to ſome of which he offered to make a Defence, but to others, and this amongſt the reſt *he made no anſwer*: 'Wherefore the ſaid *Richard* was award-'ed to Priſon during the *King's* plea-'ſure, and diſtrained to Fine and Ran-'ſom according to the quantity of his 'Treſpaſs, and that he ſhould loſe his 'Freedom of the City of *London*, and 'be no more in Office under the *King*, 'and to incur other Penalties and Forfei-'tures; as may be ſeen at large in the *Record* printed by Mr. *Selden*, in a Book entituled, *The Priviledges of the Baro-nage of* England. *pag.* 34, 35, 36, &c. So that *Licences* for the ſhipping of Wool, *contrary to an Act of Parliament*, tho mentioned by *Rocliffe* in the Book of King *Henry* the Seventh, as legal, and grantable by the King with a *Non Obſtante*, and countenanced ſufficiently by latter Judicial Authorities. *Vide*

Dyer, 52. *a*, 54. *a*, &c. Yet appeared otherwise to antient *Parliaments*; and if the Judgment of a *Parliament* be of greater Authority than that of a *Court* in *Westminster-Hall*, or indeed than that of all the *Judges* put together, and if Judicial Presidents do not make the Law, but ought to declare it only; then is the Legal Perogative in dispensing with *Acts* of *Parliament* much straiter, if any at all, than modern Opinions would represent it to us.

And that *Parliamentary Presidents* are of the highest Authority in this Nation, will appear by considering, that in former Times it was very frequent with the *Judges* in *Westminster-Hall*, if any Case of Difficulty came before them, especially if it depended upon the Construction of an *Act* of *Parliament*, to be so cautious of making any *new, unwarranted Presidents*, that they frequently adjourned the Matter, *ad proximum Parliamentum*.

By the Statute of *Westminster* the Second, made *Anno* 13. *Edwardi primi*, cap. 23. It's enacted, That *Quotiescunque de cætero evenerit in Cancellaria, quod in uno Casu reperitur breve, & in consimili casu, cadente sub eodem Jure,*

&

& simili indigente Remedio, non reperitur, concordent Clerici de Cancellariâ in brevi faciendo, vel attermiuent querentes in proximum Parliamentum & eſcribantur Caſus, in quibus concordare non poſſunt, & referant eos ad proximum Parliamentum. My Lord *Coke* in his *Second Inſtitutes*, pag. 407. tells us, That *before this Act the Juſtices did punctually hold themſelves to the Writs in the Regiſter, becauſe they could not change them without an Act of Parliament*: And *pag.* 408. *That Matters of great Difficulty were in antient Times uſually adjourned into Parliament, to be reſolved and decided there.* And that this was the antient Cuſtom and Law of the Kingdom, *Bracton* bears witneſs; *Si aliqua nova & inconſueta emerſerint, quæ nunquam priùs evenerunt, & obſcurum & difficile ſit eorum judicium, tunc ponantur judicia in reſpectu* uſque ad Magnam Curiam, *ut ibi* per Concilium Curiæ *terminentur*: And hereof the Lord *Coke* ſays, There are *infinite Preſidents* in the *Rolls* of *Parliament*, and quotes in his Margent many Preſidents out of the Year Books. Obſervable to this purpoſe is the Statute of 14 *Edw.* 3. *cap.* 6. which reciting that *divers Miſ-*

chiefs

chiefs have hapned for that in the Chancery, King's Bench, Common Bench and Exchequer, Judgments have been delayed, ſometimes by Difficulty, and ſometimes by divers Opinions of the Judges, and ſometimes for ſome other Cauſe: It is aſſented, eſtabliſhed and accorded, That from henceforth at every Parliament ſhall be choſen a Prelate, two Earls, and two Barons, which ſhall have Commiſſion and Power of the King, to hear, by Petition delivered to them, the Complaints of all thoſe that will complain them of ſuch Delays, and they ſhall have power to cauſe to come before them at Weſtminſter, *or elſewhere, the Tenor of Records and Proceſſes of ſuch Judgments ſo delayed, and cauſe the ſame Juſtices to come before them, which ſhall be then preſent, to hear the cauſe of ſuch Delays: Which Cauſe and Reaſon ſo heard, by good Advice of themſelves, the Chancellor, Treaſurer, the Juſtices of the one Bench and of the other, and other of the King's Council, as many, and ſuch as they ſhall think convenient, ſhall proceed to take a good Accord and make a good Judgment.* So that our *Parliaments* of antient Time looked upon the *Judges*, not as abſo-

lute

late Oracles of the Law, but as Men that were both liable to Miſtakes, and under the Regulation and Direction of *Parliaments*, even in their *Ordinary Proceedings*. The Nation did not ſo far intruſt them, as they themſelves would perſuade us of late.

In the Three and thirtieth of *H.* 6. a Queſtion aroſe in the *Exchequer Chamber*, Whether a *Record* then and there certified as an *Act* of *Parliament*, were really an *Act* of *Parliament* or no? *Forteſcue* who gave the Rule, ſays, *They would be well adviſed before they annulled an Act of Parliament*; and the Matter was adjourned to the next *Parliament*, that they might be certified by them of the certainty of the Matter. 33 *Hen.* 6. *Fol.* 18.

Indeed the Queſtion, Whether ſuch or ſuch a *Record* certified, were an *Act* of *Parliament* or no, may ſeem too high for modeſt *Judges* to take upon themſelves the Reſolution of? (Tho nothing can be too high nor too difficult for ſuch *Judges* to determin, who are wiſe enough to declare Acts of Parliament *void*.) But what ſhall we ſay of them in 40 *Edward* 3. who becauſe the Statute of 14 *Edw.* 3. *cap.* 6. had *impowered*

Co. 8. *Rep. Fol.* 118. *a. Moor's Reports, pag.* 818.

impowered them to amend the miſpri-ſion of a Clerk, in writing a Letter or a Syllable too much or too little, not only made a Queſtion, Whether they might amend where there was a Word wanting, but went to the *Parliament* to know the Opinion of them that made the Law? See the Story in *Coke's* 8 Report, 158. *a.* So ſacred were *Acts* of *Parliament* accounted in thoſe days, and ſo little was the *Authority* of the *Judges* in *Weſtminſter-Hall*; or rather of ſo great Credit and Authority were the Reſolutions of *Judges* in thoſe days, when they were wary and cautious of making Alterations, and in *difficult Matters* conſulted their Superiors. Other Examples of Adjournments *ad proximum Parliamentum*, may be ſeen in *Cotton's Abridgment of the Records in the Tower*. But that which ſurprizeth us is, That all our *Judges* ſince the *Reformation*, ſhould have attained to ſuch an omniſcience in the Law, that I think I may confidently affirm, there has not been an Adjournment, *ad proximum Parliamentum propter difficultatem*, theſe Hundred and fifty Years laſt paſt. Sure I am, that no Preſident

of

of any ſuch thing appears in our *modern* Books of *Law*. And yet Caſes of as great moment, concern and conſequence to the Government and the whole Nation, have come in queſtion within that ſpace of time, as ever did or could in former Ages.

But there is a Notion broached amongſt us, that the Kings of *England* have greater *Power* and larger *Prerogatives* in *Eccleſiaſtical* Matters, than in *Temporal*, and that by vertue of their *Eccleſiaſtical Supremacy* they may *diſpenſe* with ſuch *Acts of Parliament*, as concern *Religion*. But they that ſay ſo, do not conſider, that before the *Reformation*, the Kings of *England* had much leſs power in *Eccleſiaſtical Matters* than in *Temporal*, and therefore they cannot have greater *now*, unleſs ſome *Act of Parliament* give it them. And therefore this power of *diſpenſing* with *Acts of Partiament* in Matters of *Religion*, muſt be given by ſome *Acts of Parliament* ſince the *Reformation*; or elſe the King has it not.

And admit for the preſent their *Hypotheſis*, who would inveſt the *King* with whatever power the Pope *de facto* exerciſed here: Yet that will not ſerve the

the turn, for as much as the *Pope* himſelf, whatever power he might claim, and attempt to exerciſe, yet was never allowed a power to *diſpenſe* with *Acts of Parliament* concerning *Eccleſiaſtical Matters*, even when it was full Sea with him here in *England*. Take one remarkable Preſident out of *Matt. Paris*, *p.* 699. that in the Year of our Lord 1245. The King, the Prelates, Earls, Barons, and Great Men of the Realm (then Aſſembled in a moſt general Parliament at *Weſtminſter*) drew up ſeveral Articles of Grievances againſt the Popes Exorbitances and Illegal Oppreſſions, one of which was conceived in theſe words; *viz. Item, Gravatur Regnum* Angliæ *ex adjectione multiplici, illius infamis nuncii*, Non Obſtante, *per quem juramenti Religio, conſuetudines antiquæ, Scripturarum vigor, conceſſionum authoritas*, Statuta *Jura & Privilegia debilitantur & evaneſcunt*. And it cannot but ſeem ſtrange, that after ſuch publick Complaints (for many others of the like nature might be cited) of the whole Kingdom againſt *Non Obſtante's*, as intolerable Grievances they ſhould be afterwards countenanced, and ſcrewed up to ſuch a tranſcendent Soveraignty,

ty, as to frustrate *Laws*, *Statutes*, and *Acts of Parliament*; and that by vertue of an *Ecclesiastical Supremacy* by which the King is pretended to have whatever power the *Pope* had, when the *Pope himself* was never allowed *this*.

To these Presidents and Authorities of former times, it may not be improper to add what happened in the latter end of the Reign of King *James the First*, and the beginning of King *Charles the First*, upon occasion of the *Spanish Match*, with relation to the *Penal Laws* against *Roman Catholicks*: The whole Negotiation of that Affair may be read at large in *Rushworth's first Volume of Historical Collections*, and in *Prynne's Introduction to the Archbishop of* Canterbury's *Tryal*. I will only point at two or three passages that are most material to the present purpose. 1. King *James* in a Letter written with his own hand to the King of *Spain*, has these words; *viz. Leges nostrates, quæ multam Catholicis, non mortem irrogant, aboleri aut rescindi à* nobis Seorsim *non posse, leniri ita posse, cùm erit usus, exploratum habeat Serenitas vestra, omnibus ut dictorum Catholicorum Romanorum animis mansuetudine ac lenitate nostrâ*

ſtrâ conciliatis, &c. he had promiſed that no *Romiſh Prieſt*, or *Catholick* ſhould be proceeded againſt for any Capital Crime; but for the other Laws, *ut ſupra.*

Yet afterwards, when King *James* was made to believe that the Match was juſt upon the point of being concluded, a *Proclamation* was prepared for *granting a toleration to Papiſts*, tho' it never came out. But *Archbiſhop Abbot* wrote a Letter in the nature of a Remonſtrance to King *James*, in which beſides other Conſiderations of *Religion* and *Policy*, theſe words follow, *Prynne's Introduct. p.* 40. *Beſides, this Toleration which you endeavour to ſet by your Proclamation, cannot be done without a Parliament, unleſs your Majeſty will let your Subjects ſee, that you will take unto your ſelf a Liberty to throw down the Laws of the Land at your pleaſure.*

And in the Second Year of King *Charles* the Firſt, the King commanded his *Attorney General* to charge the Earl of *Briſtol* at the Bar of the Houſe of *Lords* with *High Treaſon* and other *Offences* and *Miſdemeanours*, that they might proceed in a legal Courſe againſt him,

him, according to the Justice and usual Proceedings of *Parliaments*; the *fifth* of which *Articles* is in these words, 'That from the beginning of his Negotiation, and throughout the whole managing thereof by the said *Earl of Bristol*, and during his said Ambassage, 'he the said *Earl*, contrary to his Faith 'and Duty to *God*, the true *Religion* 'professed by the *Church of England*, 'and the Peace of the *Church* and *State*, 'did intend and resolve, that if the said 'Marriage so treated of as aforesaid, 'should by his Ministry be effected, 'that thereby the *Romish Religion*, and 'the Professors thereof, should be advanced within this *Realm*, and other 'his Majesties Realms and Dominions, 'and the *true Religion* and the Professors thereof discouraged and discountenanced. And to that end and purpose 'the said *Earl*, during the time aforesaid, by Letters unto his late Majesty, 'and otherwise often counselled and 'persuaded his said late Majesty to set at 'Liberty the *Jesuits* and *Priests* of 'the *Romish Religion*, which according 'to the good, Religious and Publick 'Laws of this Kingdom, were imprisoned or restrained; and *to grant and to*

'*allow unto the Papists and Professors*
'*of the Romish Religion, free Tolerati-*
'*on, and silencing of all Laws made and*
'*standing in force against them. Vide*
'Rushworth, *Vol.* 1. *p.* 251. *and* Prinne's
'*Introduct. p.* 32.

So that King *James* thought himself had no power to *rescind or repeal the Laws Seorsim*, tho' he could so moderate the execution of them, as to make his *Roman-Catholick* Subjects be obliged to him. Yet when afterwards, in hopes of obtaining the *Infanta* for his Son, he had agreed to issue a *Proclamation* for Indulgence to *Roman Catholicks*, and a *Proclamation* was drawn accordingly, but never published; we may read the Sense of the *Church of England* upon it in *Archbishop Abbot*'s Remonstrance. The Reason why the *Proclamation* was not published, was because the putting of it in practice or not, was to depend upon the success of the *Match*, which miscarrying, the Proclamation was stifled. And that may be the reason why the *Parliament* in 21 *Jacobi* take no notice of it. But in the Parliament of 2 *Car.* 1. The Earl of *Bristol* was charged by the *King's* own Direction, for having persuaded the *King* to

to it, as having committed a very high Crime in ſo doing. Whereas if the *King* had a power by Law to do it, it could not well be a Crime in him, to perſuade him to make uſe of his Power, when the Circumſtances of his Affairs required it.

And as it was then conceived a Miſdemeanour to Adviſe the *King* to it, ſo who knows how far future *Parliaments* may account it a Miſdemeanour to have been in any wiſe inſtrumental towards the carrying on of a deſign, which ſome will not ſtick to ſay now, as the *Archbiſhop* did then, is to give the *King* a Power of throwing down all the Laws of the Land at his pleaſure?

Thus I have endeavoured to give ſome ſmall account of the riſe and progreſs of *Diſpenſations* with *Acts of Parliament*; by which it does appear, that as the clauſe of *Non Obſtante* was firſt introduced *by Popes*, and firſt applied by the inſtigation of the *Popiſh Clergy*, to break through *Acts of Parliaments*, (tho' our *Parliaments* never Countenanced them, and our *Courts of Juſtice* never extended *the diſpenſing power* farther than to particular perſons, or at

moſt to *Corporations*) ſo *Diſpenſations* ſuſpending at one blow the whole effect of *Laws*, were invented at *Rome* too, in favour of *Engliſh Papiſts*, upon the Treaty of the *Spaniſh Match* in King *James*'s time: But they never appeared bare-faced in view till King *Charles the Second's* time; in whoſe Reign they were twice damned in Parliament. The third effort has been made of late, ſince which no *Parliament* has yet ſat down.

It may ſeem ſtrange, conſidering the great Solemnity and Caution that is uſed in paſſing *Acts of Parliament*, that ſo *impudent* a conceit, as that of the *Legality* of a *diſpenſing Power*, ſhould ever enter into the thoughts of Men.

For if a Bill be firſt brought into the Houſe of *Lords*, after it is read, it is committed to a Committee of *Lords*, and certain *Judges* are appointed to attend them, that nothing may be put into the *Act*, which may be miſchievous to the *King* or *Kingdom*. After which, when it comes to be read in the Houſe again, the *Judges* ſit as Attendants upon the Houſe, and hear all the Debates of the *Lords* upon it. Indeed they have no Voice in the Houſe

of

of *Lords*, but if any *Bill* that is paſſing ſhould in their Judgments have any ill Conſequences to the *King* or *Kingdom*, they might either have offered their Reaſons at the *Committee*, or ſuggeſted what their thoughts were to ſome of the *Lords* in the Houſe, who would have acquainted the Houſe with it. A *Bill* having paſſed the Houſe of *Lords* with all this Caution, is afterwards ſent down to the *Commons* by ſome of the *Judges* themſelves, and ſometimes by the *Chief Juſtices* and *Chief Baron*, who coming into the Houſe of *Commons* with Reverence, and the reſpect of three Bows, deliver the *Bill* to the *Speaker*. And the method is the ſame in caſe of a *Bill* coming from the Houſe of *Commons*, and committed by the *Lords*, ſome of the *Judges* are always appointed to attend and wait upon the *Committee* of the *Lords*.

After all this Solemnity, the Bill yet ſignifies nothing, without the *Royal Aſſent*.

In order to which, before the *King* is to give it, the Clerks of the Houſe of *Lords* are to bring the *Bills* before the *King* and the *Privy Council*, before whom they are read, and not only the

King's Council are ordered to attend, and be preſent, but likewiſe all the *Judges* in *Weſtminſter Hall:* And if any *Bills* ſhould be thought of miſchievous Conſequence, they, as being the *King's Council* in Matters of *Law*, are bound by the expreſs tenour of their *Oath*, to ſhew and diſcloſe it to the *King*.

But if no ſuch thing be done, then the *King* in full *Parliament* gives his *Le Roy le Voet*, and ſo it becomes a general Law, to bind the *whole Kingdom*.

Now after a *Law* made with ſuch caution and ſolemnity is entred upon *Record*, as a *Statute* binding to the *whole Kingdom*; it muſt needs ſeem ſtrange, that the *Judges* in *Weſtminſter Hall* ſhould dare to allow of *Diſpenſations* with ſuch a *Law*, grounded upon the *ſole Act of the Prince*: and much more, that they ſhould, as a late *Honourable Author* tells us they have done, declare Acts of Parliament to be *void*, and contrary to the Law of *God* or Natural Equity, or that they ſhould ſuppoſe any Law thus made to be ſo, without aſſuming a power to themſelves of Impeaching *both Houſes of Parliament*, the *King* himſelf, all the *Privy Council-*

Coke 8 Rep. Fol. 118. Hob. 87.

lors, nay and themſelves too, or at leaſt their Predeceſſors, for want of Knowledge, Prudence or Foreſight, as not being capable to judge of common Senſe, or not fore-ſeeing Inconveniences, which either themſelves now perceive, or would perſuade us the *King* by ſome new illumination has diſcovered: *eſpecially* when theſe inconveniences, if real, may eaſily be redreſſed In *Parliament*, without having recourſe to a *Weſtminſter Hall Prerogative*, or Dreams of *Imperial Power* vampt up with Ignorance, a good Fancy, and a tollerable Pen, by ſome ſcurrilous Authors, whoſe names I cannot prevail upon my ſelf to defile paper with.

I cannot leave this period of time betwixt King *John* and King *Henry the Eighth*, without a remark upon an *Act of Parliament* made in the Second Year of King *Henry the Fifth*, cap. 1. That *Act recites that many Hoſpitals have been founded by the Kings of this Realm and diver's other Eſtates of Men and Women, to which Hoſpitals the Founders have given part of their moveable Goods and of their Lands, therewith to ſuſtain impotent Men and Women, &c. And that the ſame Hoſpitals be now for the*

moſt part decayed, and the Goods and Profits of the ſame withdrawn and ſpent in other uſes: And therefore Enacts, That as to the Hoſpitals which be of the Patronage and Foundation of the King, the *Ordinaries* by vertue of the King's Commiſſions to them directed, *ſhall enquire of the manner and foundation of the ſaid Hoſpitals, and of the Governance and Eſtate of the ſame, and of all other matters requiſite and neceſſary in that behalf, and the Inquiſitions thereof ſhall certifie into the King's Chancery; And as to other Hoſpitals,* which be of another Foundation and Patronage *than of the King, the Ordinaries ſhall enquire of the manner of the Foundation, Eſtate and Governance of the ſame, and of all other Matters and Things neceſſary in this behalf, and upon that make due correction and reformation, according to the Laws of Holy Church, as to them belongeth.*

This Act apparently makes a diſtinction betwixt *Hoſpitals* that are, and that are not *of the King's Foundation and Patronage*, with reſpect to the Right of *Viſitation*. Thoſe of the *King's Foundation* the *Ordinaries* were to *viſit* by the *King's Commiſſion*. But thoſe

thoſe that were not of the *King's Foundation* the *Ordinaries* were to *viſit* too, but how? *Not by any Commiſſion from the King, but as ſpecial Commiſſioners, ſpecial Viſitors, appointed by that Act.* The King did not pretend to iſſue a *Commiſſion* to *Viſit* an Hoſpital of a Subject's *Foundation.* The Parliament were ſtrangers to ſuch a conceit. The right of Viſiting, *de communi Jure* belongs to the *Founder*; he that gave the *Laws*, ought to ſee them executed. If the *Parliament* had appointed that Hoſpitals of the *Foundation* of Subjects, ſhould be *Viſited* by the Ordinaries *by Commiſſion from the King*; they had in effect tranſlated the Rights of all *Founders* that were Subjects to the King, which they never intended.

For the Legal Notion of *Viſitation* in ſuch Caſes, is no more than this, *viz.* A Man *Founds* and *Endows a College.* The Rule of *Law* and of Natural Reaſon teaches, *cujus eſt dare, ejus eſt diſponere.* As a Man may give Lands to a private perſon upon what condition the Donor pleaſes, provided it be not againſt *Law*: ſo a Man may give Lands to a Society of Men upon what terms he pleaſes. The terms expreſt in the *Foundation*

dation, are called the private *Laws*, by which the Society is to be ordered and governed. And just as when a Man makes a Lease for Life or Years, the Lessor may enter of right to see whether waste be done or no, so a *Founder* may come and enquire whether those of his *Foundation* observe the *Rules* and *Orders* prescribed by him or his Ancestors; and proceed according to the *Statutes* and the Powers thereby reserved, in case he find any neglect or misdemeanour. What right the *King* has to interpose his Authority in such case, any more than in the Government of a private Family, I cannot discern.

But *Colleges in Universities* are pretended to be visitable by the *King's Commission*, by vertue of his *Ecclesiastical Authority*: Here we must distinguish. A College of Divines, for *Example*, *founded* by a Subject and Endowed, and receiving *Laws* for their Governance from their *Founder*, are visitable by their *Founder* and his Heirs or Successors. They may be also (for any thing here alledged to the contrary) *visitable* by the *Bishop* of the *Diocess*, or (if exempt from *Episcopal*

piſcopal Juriſdiction) by the *King's Commiſſion*. But what Power have theſe *Viſitors*? The *Founder* enquires, whether the Statutes of the *Foundation* are obſerved, and puniſhes according to the *Statutes*, but goes no farther. The *Ordinary*, or *Archbiſhop*, or (if the place be exempt) the *King's Viſitors* enquire, Whether they profeſs the Doctrin, and obſerve the Rites and Ceremonies of the Church of *England*.

If the King had any thing to do to intermeddle with the Statutes and Government of ſuch a College in the *firſt Inſtance*, by virtue of his *Eccleſiaſtical Supremacy*, it ſeems very ſtrange that in the third and fourth Year of Queen *Elizabeth*'s Reign, when the Biſhop of *Wincheſter*, Founder of *Maudlyn College* in *Oxford*, had at a *Viſitation* deprived the *Preſident*, and he appealed to the Queen in *Chancery*; the *Judges* and *Civilians* having had a Conference upon the Buſineſs, agreed, that the Appeal lay not as the Law then ſtood; for that this Caſe was out of the Statutes of 24 and 25 *Hen.* 8. (which direct *Appeals* to the King in *Chancery*) and this Deprivation

tion was a meer *Temporal Thing*, and inflicted as by a *Lay-Patron*: And that, if he were wrongfully expelled, he might have an *Assize*, or other Suit at *Common Law*.

Concerning the *King's* Power with respect to the private Statutes of a *College* of a Subjects *Foundation*, I will acquaint the Reader with one *Act* of *Parliament* made 1 *Mariæ*, which will yield some very useful Inferences. The Act recites, 'Whereas the late 'Noble Prince of Famous Memory, 'King *Henry* the Eighth, Father un-'to our most Gracious Sovereign La-'dy the *Queen*, amongst other his 'godly Acts and Doings, did erect, 'make and establish divers and sun-'dry *Churches*, as well *Cathedral* as '*Collegiat*, and endowed every of the 'same with divers Mannors, Lands, 'Tenements and Possessions, for the 'maintenance of the Deans, Preben-'daries and Ministers within the same, 'and for other charitable Acts to be 'done and executed by the same Deans, 'Prebendaries and Ministers, and also 'did incorporate the same Deans, Pre-'bendaries and Ministers, and made them 'Bodies politick in perpetual Succes-

'sion,

'ſion, according to the Laws of this 'Realm of *England*: And where alſo, as the ſaid late *King*, for the better maintenance and preſervation 'of the ſaid Churches, in a godly 'Unity, and good Order and Governance, granted unto the ſeveral Corporations and Bodies Corporate of 'every of the ſaid Churches, that they 'ſhould be ruled and governed for ever, '*according unto certain Ordinances, Rules and Statutes, to be ſpecified in certain Indentures, then after to be made by his Highneſs*, and to be delivered and declared to every of the Bodies Corporate of the ſaid ſeveral 'Churches, as by the ſaid ſeveral Erections and Foundations of the ſaid 'Churches, more plainly it doth and 'may appear: Since which ſaid Erections and Foundations, the ſaid late '*King* did cauſe to be delivered to every 'of the ſaid Churches, ſo as is aforeſaid 'erected and incorporated, by certain 'Commiſſioners by his Highneſs appointed, divers and ſundry *Statutes and Ordinances*, made and decreed by 'the ſame Commiſſioners, for the Order, Rule and Governances of the 'ſaid ſeveral Churches, and of the

Deans,

'Deans, Prebendaries, and Miniſters
'of the ſame; which ſaid *Statutes* and
'*Ordinances* were made by the ſaid
'Commiſſioners, and delivered unto
'every of the Corporations of the ſaid
'ſeveral Churches in writing, *but not*
'*indented*, according to the Form of
'the ſaid *Foundations* and *Erections*;
'by reaſon whereof the ſaid Churches,
'and the ſeveral Deans, Prebendaries,
'and Miniſters of the ſame, have no
'*Statutes* or *Ordinances* of any Force
'or Authority, whereby they ſhould
'be ruled and governed, and there-
'fore remain as yet not fully eſta-
'bliſhed in ſuch ſort, as the godly
'intent of the ſaid late King *Henry*
'the Eighth was, to the great imper-
'fection of the *Churches*, and the hin-
'drance of God's Service, and good
'Order and Regiment to be had and
'continued amongſt the Miniſters of
'the ſame.

'And foraſmuch *as the Authority of*
'*the making of the ſaid Statutes, Ordi-*
'*nances, and Orders, was reſerved only*
'*unto the ſaid King, and no mention*
'*made of any like Authority to be reſer-*
'*ved unto his Heirs and Succeſſors, the*
'*ſame Orders, and Statutes, cannot now*
'*be*

' be made and provided without Autho-' rity of Parliament. And then the Act proceeds to empower that Queen *during her Life*, to preſcribe ſuch *Orders* and *Statutes*; and to *alter, tranſpoſe, change, augment or diminiſh the ſaid Orders, Statutes*, &c. And gives her likewiſe Authority to *make, ordain, and eſtabliſh Statutes, Ordinances and Foundations for the good Order and Government of Grammar Schools erected by King* Hen. 8. *or King Edw.* 6. *and to alter Statutes already made.* V. Raſtall's Statutes, 1 Mar. Par. 2. Act 9.

And ſhe dying before the work was finiſhed, there was another Act in Queen *Elizabeth*'s time impowering her to do the like, and to alter the Statutes in being.

Hence I infer, firſt, if King *Henry the Eighth* having reſerved a Power to himſelf of appointing private *Laws*, &c. as aforeſaid, and coming to die without executing that Power, his Succeſſor could not make ſuch *Laws*, though for the *Government* of *Colleges*, &c. of which the *King himſelf* was *Founder* (as moſt evidently, according to the Opinion of thoſe two *Queens* and

and their *Parliaments*, ſhe could not) and for the Government of *Colleges*, &c. that had no private *Laws* at all for their good Order and Government, then a power given by *Commiſſion to Survey, Alter, Reform, Amend*, &c. *the Statutes of the Foundation of Colleges, Halls*, &c. was not in thoſe days look'd upon as Law.

Secondly, If the *King* could not appoint *New Laws for* the *Government* of *Colleges*, &c. of *his own Foundation*, then he could not alter the Statutes of *Colleges* founded by *Subjects*.

I infer from hence in the third place, that ſome Commiſſion grounded upon theſe Statutes of Queen *Mary*, and Queen *Elizabeth*, which were Temporary, and gave thoſe *Queens* Power but for Life; has been the pattern for that Clauſe in a late *Commiſſion*, which relates to the *Colleges* in *Univerſities*, &c. And that the Gentleman who drew the late Commiſſion, had forgot thoſe two Acts of *Queen Mary* and *Queen Elizabeth*, becauſe the latter never was printed, and the former, being expired long before *his* Statute-Book was printed, is left out of it (but it is to be ſeen in *Raſtall.*)

And

And finding such a Commission upon the *Roll*, he concluded the *King* had a Power by the *Common Law* to grant it.

Archbishop Laud pretended to *visit* both *Universities*, *Jure Metropolitico*, and it was decreed at the Council Table, that he had right to *visit*; but he claimed only a Right to *visit* them, as to their *Doctrin*, and *Church Discipline*, and *Ceremonies*, not to meddle with the private Statutes of their *Foundation:* Which he disclaimed any Right to enquire into. V. *Rushworth*'s *Collections*.

I mention this only to shew how a *College* may be subject to a *double Visitation* diverso respectu.

The Question is not here concerning the *King's* Authority to visit the *University*, but what Authority he has to visit a *private College* for their good Government, and to meddle with their *Statutes*, *himself not being the Founder*, I cannot see as yet.

HAVING given some Account of the Nature of the *Antient Legal Jurisdiction*, which in former Ages the *Crown* claim'd and exercis'd in *Ecclesiastical* and *Spiritual Matters*; come we now to King *Henry* the Eighth's Reign, in

whose time all Foreign Power was excluded. the *Antient Supremacy* restor'd, and *New Powers* given, some to that King *personally*, some to Him, his Heirs and Successors. I shall run through the *Acts*, as they lye in order of Time.

The first *Act* that made an open Breach with *Rome*, was that of 24 *Hen.* 8. *cap.* 12. That no *Appeals should be used, but within the Realm:* The Preamble to that *Act* will afford us considerable Observations, and very pertinent to the chief Subject and Occasion of this present Discourse. It runs thus: *Where by divers, sundry old, authentick Histories and Chronicles, it is manifestly declared and expressed, That this Realm of* England *is an Empire, and so hath been accepted in the World, governed by one* Supreme Head *and* King, *having the Dignity and Royal Estate of the Imperial Crown of the same: Unto whom a Body Politick, compact of all sorts and degrees of People, divided in Terms, and by Names of Spiritualty and Temporalty, been bounden and own to bear, next to God, a natural and humble Obedience: He being also institute and furnished, by the Goodness and Sufferance of Almighty God, with plenary, whole*

whole and entire Power, Pre-eminence and Authority, Prerogative and Jurisdiction, to render and yield Justice, and final determination to all manner of folk Resiants, or Subjects within this his Realm, in all Causes, Matters, Debates and Contentions, happening to occur, insurge and begin within the Limits thereof, without restraint or provocation to any Foreign Princes and Potentates of the World; The Body Spiritual whereof having Power, when any cause of the Law divine cometh in question, or of Spiritual Learning, that it was declared and shewed, by that part of the said Body Politick, called the Spiritualty, now being usually called the English *Church; which always hath been reputed, and also found of that sort, that hath for Knowledge, &c. it hath been thought, and is sufficient and meet of it self, without the intermedling of any extenion Person or Persons, to declare and determine all such Doubts, and to administer all such Offices and Duties, as to their Rooms Spiritual doth appertain: And the Law Temporal, for tryal of Property of Lands and Goods, and for the conservation of the People of this Realm in Unity and Peace, without Rapine or Spoil, was and*

yet is administred, adjudged and executed by sundry Judges and Ministers of the other part of the said Body Politick, called the Temporalty; and both their Jurisdictions and Authorities, do conjoin together in the due Administration of Justice, the one to help the other.

From this part of the Preamble we may observe, First, That for the Kingdom of *England*'s being an *Empire*, consisting of two Estates of Men, and governed by *One Supreme Head*, the *King* and *Parliament* appeal to *old, authentick Histories* and *Chronicles*; and consequently, wherein the power of this *One Supreme Head* doth consist, must be learnt from Antiquity. Secondly, That the Exclusion of *Foreign Jurisdiction* was the main thing in their Eye; *without restraint or provocation to any Foreign Princes or Potentates of the World.* Thirdly, That as this *Supreme Head* administred ordinary Justice to his Subjects in Matters *Temporal*, by proper *Officers, sundry Judges and Ministers*; so in *Causes of the Law Divine, or of Spiritual Learning, the same was to be declared, interpreted and shewn by the Spiritualty*, (which is to be understood of *ordinary* Proceedings.) And con-

conſequently, not by *Commiſſioners* appointed by the *Supreme Head*: For he can appoint no *Commiſſioners* to determine Matters of civil Right, but where ſpecial *Acts* empower him, and no *Act* had yet impowered him to do ſo in *Eccleſiaſtical Matters*; nor did his Predeceſſors or himſelf, practiſe it till afterwards: For his *divers, ſundry, old Hiſtories* and *Chronicles*, afforded him no preſident of any ſuch thing; and therefore it could not be either in the nature of the thing, or in the ſenſe and meaning of the *King* and his *Parliament*, any eſſential part of his *Legal Supreme Headſhip*, to have a *Perſonal Supremacy*, either independant of the Eſtates of the Realm, or which might be adminiſtred otherwiſe than in the Courſe ſetled by Law, *i. e.* by *proper Officers*, appointed thereunto either by expreſs *Act* of *Parliament*, or the *Original Conſtitution* of the *Government*, or both.

The Body of the *Act* prohibits *Appeals* to the See of *Rome*, and enacts, *That in ſuch Caſes, where heretofore any of the King's Subjects and Reſiants have uſed to purſue*, &c. *any Appeal to the See of* Rome, *and in all other caſes of Appeals, in and for the Cauſes aforeſaid,*

they may and ſhall from henceforth take, have and uſe their Appeals within this Realm, and not elſewhere, in manner and form as hereafter enſueth, and not otherwiſe; that is to ſay, Firſt, From the Arch-deacon or his Official, if the Matter or Cauſe be there begun, to the Biſhop Dioceſan of the ſaid See, if in any caſe the Parties be aggrieved.

And in like wiſe, if it be commenced before the Biſhop Dioceſan, or his Commiſſary, from the Biſhop Dioceſan or his Commiſſary, within fifteen days next enſuing the Judgment, or Sentence thereof there given, to the Archbiſhop of the Province of Canterbury, *if it be within his Province; and if it be within the Province of* York, *then to the Archbiſhop of* York, *and ſo likewiſe to all other Archbiſhops within the King's Dominions,* &c. *there to be* Definitively *and* Finally *ordered, decreed and adjudged, according to Juſtice, without any other appellation or provocation to any Perſon or Perſons, Court or Courts.*

By the next Clauſe, Matters or Contentions to be commenced before the Archdeacon of any Biſhop or his Commiſſary are appointed, in caſe either Party be aggrieved, to be brought by Appeal to the

Court

Court of Arches or Audience of the ſame Archbiſhop of the Province, there to be Definitively *and* Finally *determined.*

The next Clauſe appoints *that Cauſes to be commenced before any of the Archbiſhops, ſhall before the ſame Archbiſhop be* definitively determined; *ſaving always the Prerogative of the Archbiſhop and Church of* Canterbury, *in all the aforeſaid Cauſes of Appeals, in ſuch and like wiſe as they have been accuſtomed and uſed heretofore.*

Then it is Enacted that *Cauſes touching the King, his Heirs and Succeſſors, ſhall be* finally decreed by *the Prelates, Abbots, and Priors of the Upper Houſe of Convocation.*

Hitherto no *Appeal* lay to the *King in Perſon*, or in *Chancery:* You have heard already, that originally the ultimate *Appeal* in *Eccleſiaſtical* and *Temporal Matters*, was to one and the ſame *Tribunal.* Afterwards the See of *Rome* gained *Appeals* by Uſurpation and Connivance. Now they are lodged in the *Dioceſan*, the *Archbiſhop*, and *Upper Houſe of Convocation*, and their Sentences reſpectively are appointed to be *final* and *definitive.* And therefore,

neither the *Clergy* in their *Submiſſion*, wherein they Recogniz'd the King to be the *Supreme Head of the Engliſh Church*, nor this *Parliament*, who had been inform'd by *Old Authentick Hiſtories and Chronicles*, that the *Spirituality* and *Laity* of this Realm are governed by *One Supreme Head and King*, did ſo much as imagine, that by vertue of that Office or Title *the Supreme Cogniſance of Appeals*, belonged to him *perſonally*. If *Appeals* to the King *in Perſon* or in *Chancery*, or *Commiſſions of Review* had then been dreamt of, there needed not another *Act* in the *Year* enſuing, to take off the *odium* of theſe *definitive* Sentences from the *Archbiſhops*. It is the *Stat. of* 25. *H.* 8. *cap.* 19. Wherein it is Enacted, *That for lack of Juſtice at or in any of the Courts of the Archbiſhops of this Realm, or in any of the King's Dominions, it ſhall be lawful to the parties grieved, to Appeal to the King's Majeſty in the King's Court of Chancery. And that upon every ſuch Appeal a Commiſſion ſhall be directed under the Great Seal, to ſuch perſons as ſhall be named by the King's Highneſs, his Heirs or Succeſſors, like as in caſe of Appeals from*

V. *Burnet's* Collect. ad. Vol. 1. p. 128, 129.

from the Admiral's Court, to hear and Definitively *to determine ſuch Appeals.*

By a ſubſequent Clauſe *Appeals from the Juriſdiction of any Abbots, Priors, or other Heads and Governours of Monaſteries,* &c. *and places exempt,* &c. *ſhall be made immediately to his Majeſty into the Court of Chancery; which Appeals ſo made, ſhall be* Definitively *determined by Authority of the King's Commiſſion.*

It looks like a blemiſh to the Notion of *Supreme Head,* in the *modern* acceptation of the Word, to have the *final* Judgment in Cauſes *Eccleſiaſtical* referr'd by the *Parliament* to the *Biſhops, Archbiſhops,* or to *Commiſſioners* appointed by vertue of an *Act of Parliament,* &c. and yet the *Parliament* in 25 *Hen.* 5. *cap.* 21. takes Notice of, and allows the *Clergy's Recognition,* nor was it till many Years after, to wit, the 39 of *Eliz.* that the *Lawyers* found out a way to make theſe *Acts* conſiſtent with their imaginary *perſonal* Supreme Headſhip; and that was by introducing *Commiſſions of Review.* Which they tell us the *King, after ſuch a definitive ſentence may grant, as Supreme Head,*

Ad

Ad revidendum, 4 *Inſtit. p.* 341. Where two reaſons are given for it, Firſt, *For that it is not reſtrained by the Act*, which ſeems to be a miſtake: For it is *reſtrain'd* by the *Act*, as much as it was capable of being *reſtrain'd*; and that by theſe words, *viz.* that *ſuch Judgment and Sentence as the ſaid Commiſſioners ſhall make and decree, in and upon ſuch Appeals, ſhall be good and effectual, and alſo definitive.* How could *Commiſſions of Review* be *reſtrain'd* more expreſly, than by theſe words? They are not nam'd indeed, and good reaſon why, *viz.* becauſe there never had been any ſuch things in our Law before. For he, that will apply to this Caſe that common Rule of *Law*, *viz.* that *where the King is not named in a Statute, he is not intended to be bound by it*; muſt prove that *Appeals* lay to the King in *Perſon* or in *Chancery*, before theſe *Acts* were made. And then perhaps I may yield, that ſuch *Commiſſions of Review* are not hereby reſtrained.

V. Cr. Car. 40 *Jones Rep. p.* 147. *Duke's Law of Char. Uſes*; *p.* 62. *Windſor and Hilton's Caſe.*

How comes it to paſs, that the *Chancellor's* Decree upon Complaint of a perſon aggrieved by a Decree of the *Commiſſioners of Charitable Uſes*, is *final*; upon which no Bill of Review is

to

to be allow'd? Why, becauſe the *Statute of 43 Eliz. cap.* 4. gives an Appeal to him, and goes no higher. And ſince there were no ſuch *Commiſſions* of *Charitable Uſes* before that Statute, therefore the Statute, being *introductive of a new Law*, muſt be purſued, and where the Statute does not provide a Remedy there is none. Now the Statute of 24 *H.* 8. *cap.* 12. and 25 *Hen.* 8. *cap.* 19. So far forth as they concern *Appeals*, are for the moſt part *introductive* of New Laws too. And the latter of them gives *Appeals* to the King in *Chancery*, which never lay before. And therefore, as the *Act* gives them, he ought to take them, and no otherwiſe; for the Act is his title, and it has negative words.

But the Lord *Coke*'s Error in aſcribing that Power, Juriſdiction, and Authority to the *King* in *perſon*, which was *ab origine* in *King*, *Lords*, and *Commons*, runs through almoſt all that he has written upon that Subject. And our *Lawyers* (who look upon him as an Oracle, for his Learning and Judgment in the Controverſial, profitable part of the Law, in which he was unqueſtionably a very great Man) follow

low him blind-fold in ſome miſtakes. They ſtudy Reſolutions of *Judges* in caſes of Property, and *till of late* have gone by that lazy rule, that *the lateſt authorities are the beſt.* So they forget Antiquity, and hardly caſt their thoughts further backward than *Dyer* and *Plowden.* Thoſe of them, that are more inquiſitive, go as high, as to the *Quadrageſms* and Book of *Aſſizes.* But the Government is not ſo much beholden to them as were to be wiſht. They deſerve worſe of it than other Men, for it being the only honour of their Profeſſion, to ſupport it by underſtanding and aſſerting it, and the natural bent of their Studies carrying them into it, their narrow Spirits, private intereſts, *Et illud quod dicere nolo*, prevail with too many of them to betray it by neglecting it.

The Lord *Coke's* ſecond Reaſon for a *Commiſſion of Review*, to examine a definitive Sentence given by the *Delegates*, is, becauſe the *Pope* as *Supreme Head* by the *Canon Law* us'd to grant a Commiſſion *ad revidendum*, and ſuch Authority as the *Pope* had, claiming as *Supreme Head*, doth of right belong to the Crown, and is annexed thereunto by

by the Statutes of 26 *Hen.* 8. *cap.* 1. and 1 *Eliz. cap.* 1. And ſo it was reſolved, ſays he, in the King's Bench, *Trin.* 39 *Eliz.*

You ſee the *Engliſh* on't is; the King may do ſo, becauſe the *Pope* did ſo; for the *Pope* was *Supreme Head* then, or claimed to be ſo, and the King is acknowledged to be ſo now.

This pretended Tranſlation of the *Pope's* Power to the *King*, is another fiction, that has contributed exceedingly to raiſe the *Supremacy* in ſome Mens Imaginations.

But it will appear by running through the ſeveral *Acts* made in King *Henry the Eighth's*, King *Edward the Sixth's*, and *Queen Elizabeth's* Reigns, concerning Religion and Church Government, that no Power given to the *King*, or acknowledged to be in him, has any reſpect or relation whatſoever to the Pope's pretended Power, heretofore exerciſed. The *Pope's* Power was aboliſh'd and abrogated. The *Ancient Juriſdiction* of the *Crown*, which by the *Common Law* and Fundamental Conſtitution of our Government, was inherent in it, was reſtored; only ſome branches of it put into another method of

Stat. 28. *Hen.* 8. *cap.* 10.

of Administration: And that by the Supreme Power of the Nation, from whose Authority and Jurisdiction nothing within this Kingdom is exempted.

That such Authority as the *Pope* had, does of right belong to the *King*, he would prove by the Statutes of 26 *Hen.* 8. *cap* 1. & 1 *Elizabeth*, *cap.* 1. The first of which, to wit, that of 26 *Hen.* 8. *cap.* 1. was repealed long before the Case in 39 *Eliz.* came in question, and consequently is there alledged to no purpose. As for the Second, that of 1 *Eliz. cap.* 1. how far that goes, we shall have occasion to enquire hereafter, when we come to it in order of time.

He gives us a *Corollary*, *viz.* that upon a *Sentence given by the High Commissioners*, *a Commission of Review may be granted*, by vertue of an express Clause in the Commission; *and if no such Clause had been*, says he, *yet a Commission of Review might have been granted*, Quia sicut fontes Communicant aquas fluminibus cumulativè, non privativè, sic Rex subditis suis Jurisdictionem communicat in causis Ecclesiasticis, vigore Statuti in ejusmodi casibus editi,

&

& provisi cumulativè, & non privativè, *by construction upon that Act.*

But a *Commission of Review* upon a Sentence given by the *High Commissioners*, is not now disputed. The *High Commission* was erected long after the 25 *Hen.* 8. And consequently a Review of their Sentences (which it seems some *construction upon that Act* gave colour for,) was not provided against by that Statute. But by what Law a *Review* should be granted of a Sentence given by the *Delegates*, which by the Act is to be *Definitive*, I am yet to seek.

I would fain know, whether a Cause determined by Virtue of this *Act* in the *Upper House of Convocation* (for there *Ecclesiastical Causes* in which the King himself is concerned, are to be *definitively* determined,) may be drawn in question ever after, before Commissioners, *ad revidendum*, or not? And if not, why is a Sentence of the *Delegates* liable to be examined any more than that?

Do these Men really believe that the *Judicial Authority* of the Nation, is by the *Law* lodg'd in the *King's Person?* What means then the Act of 16 *Car.* 1. *cap.* 10, *That neither his Majesty nor his Privy*

Privy Council, have or ought to have any Jurisdiction, Power or Authority, by Engliſh *Bill, Petition, Articles, Libel, or any other Arbitrary Way whatſoever, to examine or draw in queſtion, determine or diſpoſe of the Lands, Tenements, Hereditaments, Goods or Chattels of any the Subjects of this Realm; but that the ſame ought to be tryed and determined in the Ordinary Courts of Juſtice, and by the Ordinary Courſe of Law.*

If it be ſaid, the *King* appoints the *Judges*, and hath formerly ſate in the *King's Bench* in *Perſon*: For his appointing the *Judges*; ſince the time is known when it was otherwiſe, that cannot be urged as a *Perogative* originally inherent in the *King*: That our Kings have ſometimes ſate in the King's Bench in *Perſon*, I yield, and will agree to all the Inferences that can be drawn from it; do but allow me, which cannot be deny'd, that Writs of Error lye from the Court of *King's Bench*, and *Appeals* out of *Chancery* (whoever ſits there) before the Lords in *Parliament*; who, whether the *King* be preſent or abſent, agreeing with, or diſagreeing from the Senſe of the Houſe, affirm or reverſe the Judgments and Decrees, as they ſee Cauſe:

Cauſe: And were it not more honourable to aſcribe no *Judicial Power* at all to the King *in Perſon*, than to make him Judge of an *Inferior Court*. But you'l find that our Kings never ſate in the *King's Bench* or the *Starr Chamber Juridically*: The Courts gave the Judgments, and they were entred *per Curiam*. *Co. 12. Rep. p. 64.*

Nay, take in their *Hypotheſis*, who would perſuade us, that *Parliaments* of old time before they were chriſten'd by that Name, were but Aſſemblies of the King's Tenants, in the nature of a *Court-Baron*. Why, even in a *Court-Baron* the Suitors are Judges. *Brady, Johnſon, Filmer.*

And all the Judges of *England* told King *James* the Firſt, *That the King could not in Perſon adjudge any Caſe.* *Co. 12. Rep. 64.*

If therefore our *King's* have no Judicial Power *perſonally* in them, how can they derive to others what themſelves have not? How comes it to paſs that the *King* can grant a Commiſſion to *review* a Decree, when himſelf cannot *review* it, nor is impowered by *Act of Parliament* to grant any ſuch *Commiſſion*?

I will dwell no longer upon these *Acts* concerning *Appeals*. It appears (I hope) already, that *Appeals*, which by the *Antient Law* of the Realm, were to the *Curia Regis*, had been gain'd from it to the Court of *Rome*. That King *Henry* the Eighth caused such Foreign *Appeals* to be restrain'd, and directed how they should be prosecuted within the Realm for the future. Which Direction ought to be pursued; for so far forth as it gives *Appeals* to the King in *Chancery*, it is *introductive* of a New Law: Which I must believe, till I can be inform'd that our *Kings* in former times ever received *Appeals* out of *Parliament*, or their *Magna Curia*, what ever that was.

The next thing in our way, is another part of the fore-mentioned Statute of 25 *Hen.* 8. *cap.* 19, *viz. That the Clergy in their Convocations shall enact no Constitutions without the King's Assent.* The words of the enacting Clause are, *That they* (the Clergy) *nor any of them from henceforth, shall presume to attempt, alledge, claim, or put in ure any Constitutions or Ordinances, Provincial or Synodals, or any other Canons; nor shall enact, promulge, or execute*

cute any ſuch Canons, Conſtitutions or Ordinances Provincial, by whatſoever Name or Names they may be call'd, in their Convocations in time coming (which alway ſhall be aſſembled by Authority of the King's Writ) unleſs the ſame Clergymen have the King's moſt Royal Aſſent and Licence, to make, promulge and execute, ſuch Canons, Conſtitutions and Ordinances, Provincial or Synodal, upon pain of every one of the Clergy doing contrary to this Act, and being thereof convict to ſuffer Impriſonment, and make Fine at the King's Will.

This *Act* cannot be pretended to give the *King* and the *Clergy* any new power: For it is penn'd in *Negative Words.* It is but *declarative* of what the *Antient Law* of the Kingdom was. The *Clergy* had frequent *Provincial Synods* ever ſince the Chriſtian Faith was introduc'd amongſt us; but till the *Pope* had ſet his Foot here, our *Kings* ſometime preſided, were frequently preſent in them: Their *Aſſent* was had to all *Conſtitutions* made for the Government of the *Church.* And *Canons* intended to bind the *Laity*, never obtain'd as *Eccleſiaſtical Laws* here, without the Aſſent of the *Temporalty.* But when the *Clergy*

had got an Exemption from the *Temporal* Laws, and lookt upon themſelves as a diſtinct, ſeparate Body of Men from the reſt of the *King*'s Subjects, as having a dependance upon, and owing Canonical Obedience to a Foreign Head; then they proceeded to make *Canons* without conſent of the *King* or the *Temporalty*. But even in thoſe days when ever they entrench't upon the *Common Law* of the Realm, which was the Subjects Fence and Protection, the *Temporal Courts* gall'd them with *Prohibitions*: They had not in the times of *Popery* a Power of binding the *Laity*, even in Matters of *Religion*, without their *Aſſent*. But themſelves they bound, and the inferior Clergy were all ſubjected to the Power of *Provincial Synods*, becauſe of their Oath of *Canonical Obedience*: And theſe *Canons* by which they bound the whole Body of the *Clergy*, never had any *Royal Aſſent* to them ſince King *Stephen*'s days. No *Eccleſiaſtical Laws*, other than what were enacted in *Parliament*, having ſince that *King*'s Reign derived their Authority from the *King*. This Act therefore ties up the *Clergy* from any power of making *Canons* and *Conſtitutions* without

out

out the *King*. But ſince it gives them no manner of Power or Authority whatſoever, their Power (even the *Royal Aſſent* taken in) is no other ſince this Act, than it was before they had withdrawn themſelves from the *King* and the *Laity*: Which how far it extended has been ſufficiently explain'd already.

I will not go ſo far as ſome have done, to affirm, that the *King's Aſſent* here ſpoken of, muſt be underſtood of his *Aſſent* in *Parliament*. But I think it is very obſervable, that the *Parliament* did by this *Act* appoint *Sixteen* of the *Two* and *thirty* Commiſſioners, (who were *to view, ſearch and examine the Canons, Conſtitutions and Ordinances Provincial and Synodal heretofore made*, in order to the keeping of ſome and rejecting others) to be of the *Upper* and *Nether Houſe* of *Parliament*. They would have Committees of their own Houſes inſpect all *Canons* formerly made, and judge which were fit to be retain'd. How can we then imagine, that they had any thoughts of ſubjecting themſelves and their Poſterities, to the *King* and the Convocation of the *Clergy* in Matters of *Religion* for the future? I 3. Nay,

Sir *Edward Bagſhaw's* Argument concerning the Canons.

Nay, they seem, as it were, jealous lest this *Act*, tho as cautiously penn'd as the Wit of Man could contrive it, should be made use of to colour some unwarrantable Power of the *Clergy* in Convocation, having the *Royal Assent* to their *Constitutions*: And therefore they add a special *Proviso*, that no *Canons, Constitutions or Ordinances, shall be made or put in execution within this Realm, by the Authority of the Convocation of the Clergy, which shall be contrariant or repugnant to the King's Prerogative Royal, or the Customs, Laws or Statutes of the Realm.* Now whether it was against the Laws of the Realm or not, in the Opinion of this *Parliament*, for the *King* and the *Clergy* to top any *Laws* upon them without their *consent*, will appear by the Preamble of another *Act* of this very Session of *Parliament*, and therefore I will pass it by now.

Nor was there any thing in the future practice of this *King's* Reign, which gave or asserted any Power to the *King* and *Convocation*, to bind or conclude the People without an *Act* of *Parliament* concurring and enforcing the same.

The

The next *Act* is the *Twentieth Chap.* of this ſame Seſſion of *Parliament*, concerning the *Election and Conſecration of Biſhops*. This Act does not reſume the *Election* to the *Parliament*, from whom it had been gain'd, but leaving a ſhadow of *Election* in the *Conſiſtory*, impowers the *King* to name the Perſon, commands the *Dean* and *Chapter*, under the Penalty of a *Præmunire*, to chooſe the Perſon nominated to them in the Writ of *Congé d'eſlire*, and appoints how he ſhall be Conſecrated without *Pall, Bulls, or other things formerly requiſite to be obtained at the See of* Rome.

This *Prerogative* that our *Kings* now have in the *Election of Biſhops*, ſtands upon the foundation of this *Act of Parliament*, and other it has none. The *Supreme Headſhip*, it ſeems, did not include the power of appointing *Biſhops*, for that had been allow'd two Years ago, and is acknowledged by way of recital in this Seſſion, *cap.* 21. and yet the *Election* and Conſecration of *Biſhops* is appointed by *Act of Parliament*; ſo that the title of *Supreme Head* did not then imply any ſuch exor-

bitant Power, as ſome have imagin'd.

Next comes the Act entituled, *No Impoſition ſhall be paid to the Biſhop of Rome*, &c. It recites, That *where this your Grace's Realm, recogniſing no Superior under God, but only your Grace, hath been and is free from ſubjection to any Man's Law, but only to ſuch as have been deviſed, made and ordained within the ſame, for the Wealth of the ſaid Realm, or to ſuch other, as by ſufferance of your Grace and your Progenitors the People of this Realm have taken* at their free Will and Liberty by their own Conſent *to be uſed among them, and have bound themſelves by long uſe and cuſtom to the obſervance of the ſame, not as to the obſervance of the Laws of any foreign Prince, Potentate, or Prelate, but as to the accuſtomed and ancient Laws of this Realm originally eſtabliſh'd as Laws of the ſame*, by the ſaid ſufferance, conſent, and cuſtom, and *none otherwiſe.* Theſe *other Laws*, which the People of this Realm are ſaid to have taken *at their free Will and Liberty, by their own Conſent*, and are ſaid to have bound themſelves to, as to the Eſtabliſhed Laws of the Realm, *by the ſaid ſufferance, conſent, and*

and cuſtom, and none otherwiſe, are the *Canon Laws*. Which here the *Parliament* diſclaim any Obligation to the obſervance of, otherwiſe than as they had bound themſelves *by their own ſufferance and conſent*. And conſequently they did not look upon any *Eccleſiaſtical Laws*, as obligatory to themſelves and their Poſterity, but what themſelves had, or for the time to come ſhould *Conſent* to. This would never have proceeded from them, if they had imagin'd, that the *Legiſlative Power in Eccleſiaſtical Matters*, was or ever had been veſted in the King's *Perſon*, as ſome *amongſt* us have not ſtuck to aſſert of late.

But the *Act* goes on; *It ſtandeth therefore with natural equity and good Reaſon, that in all and every ſuch Laws humane, made within this Realm, or induced into this Realm*, by the ſaid ſufferance, conſent, and cuſtom, *your Royal Majeſty*, and your Lords Spiritual and Temporal and Commons, *repreſenting the whole ſtate of your Realm in this your moſt high Court of Parliament, have full Power and Authority, not only* to diſpenſe, *but alſo to authorize ſome Eleſt Perſon or Perſons, to* diſpenſe *with thoſe and all other*

humane

humane Laws of this your Realm, &c. *and also the same to abrogate, amplifie or diminish, as it shall seem to your Majesty*, and the Nobles and Commons *of your Realm, present in your Parliament, meet and convenient*, &c. Here is no *dispensing Power* acknowledged to be *personal* in the *King*. Nor is the *Parliament* so much a stranger to Matters of *Religion*, as not to have a share even in the *dispensing*, as well as the *abrogating* Power, with respect to *Ecclesiastical Laws*. You see, as soon as ever the foreign Yoke was cast off, they put in for their share of the *Supremacy*, nor did the *King* look upon it as any diminution to his own *legal* right, to admit their claim. It was in concurrence with them, and with *their assent* that the method of prosecuting *Appeals* had been settled; they joyn'd with him in tying up the hands of the *Clergy* from promulging any *Constitutions*, without the *Royal Assent*; their Authority concurr'd in appointing how *Bishops* should be *Elected, Invested, and Consecrated*; and here they impower the *Archbishop* and the *King* to grant *Dispensations*.

Then

Then they proceed to Enact how, and by whom, and in what caſes *Diſpenſations* ſhall be granted for the future. And firſt they impower *the Archbiſhop of* Canterbury *for the time being, and his Succeſſors to grant Diſpenſations to the King, his Heirs and Succeſſors, for cauſes not contrary to the Scriptures and the Laws of God.* How? Could not the *King* by vertue of his *inherent Prerogative* diſpenſe with himſelf? Was not this *involv'd in the formal conception of Imperial Soveraignty*? No. If he will act contrary to *Law*, he muſt have a *Diſpenſation*, and that *Diſpenſation* granted by a *Subject*, impowered by *Act of Parliament* ſo to do. This is the firſt and only *Act* that gives the *King* a power of *diſpenſing* in *Eccleſiaſtical* Matters, and the Archbiſhop of *Canterbury* may *diſpenſe* in all caſes, which the *King* by vertue of this *Act* may *diſpenſe* in; only *in caſes unwont to be diſpenſed in at* Rome, *he muſt adverti ſe the King or his Councel; who if they determine that ſuch Diſpenſation ſhall paſs, then the Archbiſhop, having the King's Licence, ſhall diſpenſe accordingly.* But who ever heard of the *King's* Licenſing an *Archbiſhop* to *diſpence* with Dr. Hicks.

an

an *Act of Parliament*? How would it ſound in our Ears, if *Divinâ Providentiâ* Cantuarienſis *Archiepiſcopus* ſhould iſſue a *Non Obſtante* to an *Act* of the *King, Lords, and Commons* in *Parliament*? And yet the *Archbiſhop* may grant *Diſpenſations* with the *King's allowance* in all Caſes whatſoever, that that *Act* extends to. Therefore, I ſay, the *King's* Power of *diſpenſing* by vertue of that *Act*, is with the *Canon Law* only, which in effect was no Law at all.

Hob. p. 146. in Colt and Glovers *Caſe*.

To ſay that *the King is not reſtrain'd by this Act, but his power remains full and perfect as before, and he may grant them ſtill*, as King, *for all Acts of Juſtice and Mercy flow from him*, is a ſound of words only, *vox & præterea nihil*. And yet we find by Experience, that *hæ nugæ ſeria ducunt in mala*; there is likewiſe a ſtrange Expreſſion in *Moor's Reports*, 542. cs. 719. *Al tierce point ils ſemblont que la Royne poit granter diſpenſations come le Pape puiſſoit en caſes lou l' Archeveſque n'ad authority per le Stat. de 25 H. 8. de granter diſpenſations: quia tout l' authority, que le Pape uſoit, eſt done al Corone.* But theſe and many other ſcattered Caſes

and

and extravagant Expreſſions of Reporters (which have been made uſe of as *Judgments* in after-times) there may poſſibly be ſome account given hereafter in a Diſcourſe by it ſelf.

The latter part of the Statute of 25 *H.* 8. *c.* 21. concerns the *viſiting* of Colleges, Hoſpitals, and places exempt. It is enacted that *the Archbiſhop of* Canterbury *or any other perſon or perſons, ſhall have no Power and Authority, by reaſon of this Act, to viſit or vex any Monaſteries, Abbeys, Priories, Colleges, Hoſpitals, Houſes, or other places Religious, which be or were exempt before the making of this Act, but that Redreſs, Viſitation, and Confirmation ſhall be had by the King's Highneſs, his Heirs and Succeſſors by Commiſſion under the Great Seal, to be directed to ſuch perſons as ſhall be appointed requiſite for the ſame,* &c.

This *Act of Parliament*, having abrogated the *Pope's* Power here in *England*, thoſe places that had been exempt from ordinary Juriſdiction, would naturally have fallen back within the *Viſitation* of the *Dioceſan* (I mean, ſuch places, as had been exempt by vertue of any Bulls, Licences,

or

or Diſpenſations from *Rome* only) if it had not been eſpecially and expreſly provided that *nothing in the ſaid Act ſhould be taken nor expounded to the derogation or taking away of any grants or confirmations of any Liberties, Priviledges, or Juriſdiction of any Monaſteries, Abbies, Priories, or other Houſes or places exempt, which before the making of this Act have been obtained at the See of* Rome: and if the *Viſitation* of them by *Commiſſion* under the Great Seal, had not been provided for.

In the next Year, *Ann.* 26 *H.* 8. The Statute was made, which enacts that the *King our Soveraign Lord, his Heirs and Succeſſors, Kings of this Realm, ſhall be taken, accepted and reputed the* Only Supreme Head on Earth *of the Church of* England, *called* Anglicana Eccleſia, *and ſhall have and enjoy, united and annexed to the Imperial Crown of this Realm, as well the title and ſtile thereof, as all Honours, Dignities, Preheminences, Juriſdictions, Priviledges, Authorities, Immunities, Profits, and Commodities to the ſaid Dignity of Supream Head of the ſame Church belonging and appertaining.*

What

What was then meant, underſtood, recognis'd &c. by the word *Supreme Head*, will appear by theſe following Conſiderations; *Firſt*, that the recital of the *Act* ſhews they intended not by that recognition to inveſt him with any *new* Power: For they recite that the *King's Majeſty juſtly and rightfully, is, and ought to be the Supreme head of the Church of* England; *and ſo is recogniſed by the Clergy of the Realm in their Convocations, yet nevertheleſs for corroboration and confirmation thereof*, &c. So that this *Act* ſo far forth, as it gives or acknowledges the Title of SUPREME HEAD, is but *Declarative*. And conſequently they, that upon this *Act* ground a Tranſlation of the *Pope's* Power by the *Canon-law*, to the *King*, utterly miſtake the matter: For our *King's Eccleſiaſtical Juriſdiction* was not grounded upon the *Canon Law*, but the *Common Law* of the Realm; it was a Native of our own, and not of any foreign extraction: *Secondly*, That this *Supreme Head-ſhip* of the *Church*, conſiſts only in his being *Supreme head* of *that Church of England*, which then was called *Anglicana Eccleſia*; and who they were, appears *Firſt*, by the Statute

tute of 24. *Henr.* 8. *cap.* 12. aforementioned: *The body Spiritual whereof* (of the Realm of *England*) *having Power, when any Cauſe of the Law Divine, happened to come in queſtion, or of Spiritual Learning, that it was declared, interpreted, and ſhew'd by that part of the ſaid body Politick, called* the Spiritualty; *now being uſually called* the *Engliſh* Church. So that the Spiritualty are the *Eccleſia Anglicana*, of whom the *King* is here declar'd the *ſupreme head*. *Secondly*, It appears by the Recognition of the *Clergy*, who having no Authority to declare a *Supreme Head* in *Eccleſiaſtical* matters for the *Laity*, did but by that Submiſſion acknowledge themſelves to be to all intents and purpoſes, the *King*'s Subjects and not the *Pope*'s. But *Thirdly*, This ſame *Parliament* in this very Seſſion tells us, that the *King* had *of right always been ſo*: It is in the *third Chapt. for the payment of firſt-fruits to the King*. The words are, *Wherefore his ſaid humble and obedient Subjects, as well the Lords Spiritual and Temporal, as the Commons in this preſent Parliament Aſſembled*, &c. *do pray that for the more ſurety, continuance, and augmentation of his Highneſs Royal eſtate,*

eſtate, being not only now recogniſ'd (as he always indeed hath heretofore been) *the only* Supreme Head *in Earth, next and immediately under God*, of the Church of England, *but alſo* their *moſt aſſured and undoubted, natural Lord and King, having the whole Governance of this his Realm*, &c. They tell him, That he was *not only* the Supreme Head of the Church of *England, but their* (viz. the *Temporalties*) *Lord and King*; ſo that he had the *Governance* of the *whole Realm* and Subjects of the ſame. What can be more plain, than *firſt*, That by *Supreme Head* of the Church of *England*, was meant the *Supreme Head* of the *Spiritualty*? which was neceſſary to be recogniz'd, becauſe they had acknowledged formerly another *Supreme Head. Secondly*, That they gave no new Power by that word, ſince they tell us, that *indeed he had always been ſo.* And *Thirdly*, That his *Supremacy* conſiſts only in a power of *Governance. Fourthly*, This title of *Supreme Head* does not give the *King* any power of *diſpenſing* with *Acts of Parliament* in Matters of *Religion* or *Eccleſiaſtical* Affairs whatſoever. That power was ne-

ver yielded to the *Pope* himſelf, during that whole time that he was uncontroulably ſubmitted to, as *Head of the Church*. That power they complain of in the Act of 25 *H.* 8. *cap.* 21. as *an Uſurpation, an Abuſe, a Cheat*. They declare it to be in the *King* and themſelves. *Fifthly*, Dr. *Burnet* in his *Hiſtory of the Reformation*, *p.* 142, 143. *Firſt Part*, has theſe words; *But at the ſame time that they pleaded ſo much for the King's Supremacy, and power of making Laws for reſtraining and coercing his Subjects, it appears that they were far from veſting him with ſuch an abſolute Power, as the Popes had pretended to*; for they thus defined the extent of the King's Power. 'To them (ſpeaking 'of Princes and Magiſtrates ſpecially and 'principally it appertaineth to defend 'the Faith of Chriſt and his Religion, 'to conſerve and maintain the True 'Doctrine of Chriſt, and all ſuch as be 'true Preachers and ſetters forth there-'of, and to aboliſh Hereſies, Abuſes, 'and Idolatries, and to puniſh with cor-'poral pains, ſuch as of Malice be the 'occaſion of the ſame. And finally, to 'overſee and cauſe that the ſaid Biſhops

Inſtitution of a Chriſtian Man.

'and

'and Priests do execute their Pastoral 'Office truly and faithfully, and spe-'cially in these Points which by Christ 'and his Apostles were given and com-'mitted to them; and in case they shall 'be negligent in any part thereof, or 'would not diligently execute the 'same, to cause them to double and sup-'ply their lack; and if they obstinately 'withstand their Prince's kind monis-'tion, and will not amend their faults, 'then and in such case, to put others in 'their rooms and places: And God hath 'also commanded the said Bishops and 'Priests to obey with all humbleness 'and reverence, both Kings and Princes 'and Governors, and all their Laws 'not being contrary to the Laws of 'God) whatsoever they be, and that 'not only *propter iram*, but also *prop-'ter conscientiam. Thus it appears, that they both limited obedience to the King's Laws, with the due caution of not being contrary to the Law of God; and acknowledged the Ecclesiastical Jurisdiction in discharge of the Pastoral Office, committed to the Pastors of the Church by Christ and his Apostles; and that the Supremacy then pretended to, was no*

such extravagant Power as some imagine. *Sixthly*, That the *Supremacy* ascribed to the *King* by this *Act*, had no reference to any such absolute Power as the *Pope* pretended to, appears by the whole course of the *King's Reign*; forasmuch as the Exercise of this *Supremacy* in every Branch of it, was directed by *particular* and *positive Laws* made much about the same time; nor perhaps were any Acts of Supremacy exerted during this King's Reign, that some Act of *Parliament* or other did not warrant, as will appear in our Progress.

The truth of it is, that no more can be made of it, than an utter Exclusion of the *Pope's* pretended Authority, and an acknowledgment that the *King* is (not an absolute *Dominus facotum in Spiritualibus*, but) the Fountain of Justice to be administred according to Law in Cases commonly called *Ecclesiastical*, as well as *Temporal*, without any dependance upon a *Foreign Potentate*.

Hence it is, that in these Acts of King *Henry* the Eighth concerning *Ecclesiastical* Affairs, the Crown of *England*

England is ſo often mentioned to be an *Imperial Crown* and the *Realm* of *England*, an *Empire*. Tho that Word has been made uſe of of late to countenance a very ſtrange and unheard of Judgment: But the Gentleman that made uſe of the Word, either underſtood it not, or wilfully miſapplyed it. The Crown of *England* is ſaid to be an *Imperial Crown*, becauſe it is ſubject to no *Foreign Juriſdiction*. The Kings of *England* are not *Homagers* nor ever were, for their Kingdom to any other, as many Kings have been. A *Regal Crown* does not *ex vi termini*, exclude a Subordination; an *Imperial Crown* does. The Emperor of *Germany* (whoſe *Crown* muſt needs be *Imperial*) has leſs Power in the *Empire* than moſt Princes in their own Dominions. Sir *Edward Hales's* Caſe.

But it muſt be confeſs'd, that the Word *Supreme Head*, tho legally underſtood, it be no ſuch Bug-bear, yet was a Term borrowed from *Antichriſt*; a Word that gave offence, eſpecially to thoſe that knew little of its Signification, but what they had learnt from a Juriſdiction pretended to be exercis'd

ercis'd by the Pope as ſuch; and claiming to be ſo, as *Vicar General* to *Chriſt*, *Papiſts* thought the Right of St. *Peters* Succeſſor injuriouſly invaded; and *Proteſtants*, though univerſally ſubmitting to the Legal Power of the Crown, yet many of them boggl'd at the Title, as making too bold with our *Saviours* Prerogative of being the only *HEAD* of the Church. And ſo great Powers were given to King *Henry* the Eighth by *Acts* of *Parliament*, (of which by and by) in *Eccleſiaſtical* and *Spiritual* Matters; which, though given by particular *Laws*, and thoſe *Laws* occaſion'd by the then Circumſtances of Affairs; yet by ſome unadviſed Perſons are confounded with his *Legal* and *Original Supremacy* at the *Common Law*, or at leaſt are lookt upon as incident to the *Title*, *Style*, and *Dignity* of *Supreme Head*; that no wonder the Title has found little countenance from Proteſtant Writers.

The other part of this ſhort Act of 26 *Hen.* 8. *cap.* 1. is very obſervable, and diſcovers a Secret that few obſerve; but rightly conſidered, lays open

open a very fine Scene, and gives an undeniable Answer to the only material Argument that can be produced in favor of the late *Eccleſiaſtical Commiſſion*. The Argument lies thus: King *Henry* the Eighth iſſued a Commiſſion to *Cromwell*, whereby he conſtituted him his *Vicegerent* in *Eccleſiaſtical* Matters, and delegated to him the Exerciſe of all his *Eccleſiaſtical Juriſdiction*, long before the 1 *Eliz.* which impowered Queen *Elizabeth* and her Succeſſors from time to time, to iſſue ſuch Commiſſions: And this Commiſſion to *Cromwell* cannot be deny'd to have been a Legal Commiſſion, becauſe it is recited in an Act of Parliament, admitted to be according to *Law*, and a place appointed him in reſpect of that Office, above the Archbiſhop of *Canterbury* in the Houſe of *Lords*. And there having been no Act of Parliament in King *Henry* the Eighths time, whereby he was expreſly impowered to iſſue ſuch a Commiſſion; the Commiſſion was warranted by the Common Law. This being the *Argumentum palmarium*, tho fooliſhly omitted by thoſe that have

31 *Hen.* 8. *cap.* 10.

undertaken to write in Vindication of the Proceedings of the late Commissioners, receives a full and satisfactory Answer from this very Act of Parliament, this being the Act which was the Ground and Foundation of that Commission, and, as far as I know of the Commission, did really warrant it. The Words are these, *viz. And that our Sovereign Lord the King, his Heirs and Successors, Kings of this Realm, shall have full Power and Authority from time to time, to visit, repress, redress, reform, order, correct, restrain, and amend all such Errors, Heresies, Abuses, Offences, Contempts and Enormities, whatsoever they be, which by any manner Spiritual Authority or Jurisdiction ought or may be lawfully reformed, repressed, ordered, redressed, corrected, restrained or amended, most to the Pleasure of Almighty God, the increase of Vertue in Christs Religion, and for the conservation of the Peace, Unity, and Tranquillity of this Realm, any Usage, Custom, foreign Laws, foreign Authority, Prescription, or any thing or things to the contrary hereof notwithstanding.* By these Words a Personal Authority

(not

(not of *Legiſlation*) but of *viſiting, redreſſing, correcting*, &c. is given; to whom? *To the King, his Heirs and Succeſſors.* This Power was given by the *Parliament*, nor was enjoyed or exerciſed by the *King* or any of his *Predeceſſors* before; and being veſted in the *King*, his *Heirs* and *Succeſſors*, may conſequentially be delegated to *Commiſſioners*. After this *Act* was paſs'd, out comes *Cromwell*'s Commiſſion of Vicegerency, and not till then, tho the *Clergy* had recogniz'd the *Supremacy* two years ago; and the Parliament in the 24 *Hen.* 8. *cap.* 12. and the 25 *Hen.* 8. *cap.* 21. had in effect done ſo too: Yet was not the recogniſ'd, reſtor'd and declar'd *Supremacy* lookt upon as any Warrant for an *Eccleſiaſtical Commiſſion*, till a new Power was given to the *King* by this *Act*: And this *Act* of *Parliament* having been Repealed by the Firſt and Second of *Phil.* and *Mar.* and never ſince reviv'd; there is now no ground from this Act, or from that Preſident of *Cromwell*'s Commiſſion, for a like *Commiſſion* in our Days. How far the Statute of 1 *Eliz.* gives

gives countenance thereunto, shall be enquired into when we come to it.

The next Act that I shall take notice of, is the Thirteenth Chapter of this same Session, entituled, *By whom Suffragans shall be nominated and elected:* The Act recites, that *sithen the beginning of this present Parliament, good and honourable Laws and Statutes have been made and established for Elections, Presentations, Consecrations, and investing of Archbishops and Bishops of this Realm, with all Ceremonies appertaining to the same; yet nevertheless, no Provision hath been made for Suffragan Bishops*; and therefore enacts, what *Towns shall be taken and accepted for Sees of Bishops Suffragans*: And gives the King *Power and Authority to give to one of two Persons to be presented to him by any Archbishop or Bishop, the Stile, Title and Name of a Bishop of such a See*, &c. provides *for the Consecration of such Bishops*; limits *what Authority they shall have in the Diocess*, &c.

Hence

Hence I infer, that the *Parliament* had its ſhare in the Government of the *Church*, notwithſtanding the Reſtitution of the *Supremacy*; and the *King* could not as SUPREME HEAD, without this *Act* of *Parliament* appoint the number of Suffragan Biſhops, or give, limit or bound their Power and Authority.

The Letters Patents made purſuant to this Act, conclude, *Vigore Statuti in ejuſmodi caſu editi & proviſi.* Dr. *Burnet. Coll. of Rec. ad Vol.* 1. *p.* 130.

In the Twenty eighth Year of this *King*, it was enacted, That *all Archbiſhops and Biſhops of this Realm, or of any the Kings Dominions conſecrated, and at this preſent Parliament taken and reputed for Archbiſhops and Biſhops, may* by the Authority of this preſent Parliament, *and not by Vertue of any Proviſion or other Foreign Authority, Licence, Faculty or Diſpenſation, keep, enjoy, and retain their Archbiſhopricks and Biſhopricks, in as large and ample manner as if they had been promoted, elected, confirmed and conſecrated according to the due Courſe of the Laws of this Realm: And that every Archbiſhop and Biſhop of this Realm, and of other the King's Dominions, may miniſter, uſe and exerciſe all and every thing and things pertaining*

to

to the Office or Order of an Archbiſhop or Biſhop, with all Tokens, Inſigns and Ceremonies thereunto lawfully belonging.

Here the *Parliament* impowers the *Archbiſhops* and *Biſhops* that then were, to uſe and exerciſe their *Offices* and *Orders*, not by Virtue of any *Foreign Authority*, but by *Authority of this preſent Parliament*. This the *King* could not have done without conſent of *Parliament*, becauſe he could not *diſpenſe* with the Statutes of *Præmunire* and *Proviſors*, as has been ſaid already, and as appears by a notable *Act* in the Twenty fifth Year of this King's Reign, concerning the Deprivation of the Biſhops of *Saliſbury* and *Worceſter*: The *Act* recites, *That where by the laudable Laws and Proviſions of this Realm, it had been eſtabliſhed that no Perſon or Perſons of of what Degree, Eſtate or Quality, ſhould take or receive within this Realm of* England, *to Farm by any Procuracy, Writ, Letter of Attorney, Adminiſtration, by Indenture, or by any other Mean, any Benefice or other Promotion within this Realm, of any Perſon or Perſons, but only of the King's true*

Burnett's Collect. of Records. ad Vol. 1. pag. 121, 122, 123.

true and lawful Subjects, being born under the King's Dominions: And alſo, that no Perſon or Perſons of what Eſtate and Degree ſoever, by reaſon of any ſuch Farm, Procuracy, Letter of Attorney, Adminiſtration, Indenture, or by any other Mean, ſhould, &c. *Notwithſtanding which ſaid wholſom Laws, Statutes and Proviſions, the King's Highneſs being a Prince of great Benignity and Liberality,* having no Knowledge, or due Information or Inſtruction of the ſame Laws, Statutes and Proviſions, *hath heretofore nominated and preferred, and promoted* Laurence Compegius, *Biſhop of* Sarum, *with all the Spiritual and Temporal Poſſeſſions,* &c. *belonging to the ſame; And hath alſo nominated, preferred and promoted* Hierome, *being another Stranger, to the See of* Worceſter, &c. *Be it enacted* by Authority of this preſent Parliament, *That the ſaid two ſeveral Sees of* Saliſbury *and* Worceſter *ſhall be taken, reputed and accounted in Law void,* &c. Here we ſee the *King* was not allowed to act contrary to *Acts of Parliament* concerning *Eccleſiaſtical Matters:*

Note: We ſee *Biſhops* depriv'd by *Act of Parliament*, and by the Act of 28 *Hen.* 8. *cap.* 16. other *Biſhops* and *Archbiſhops*, who in ſtrictneſs of Law were no *Biſhops* of thoſe *Sees*, by reaſon of their *foreign Proviſions*, quieted in the injoyment of their *Biſhopricks* and authoriz'd to exerciſe their *Epiſcopal Function*, there by *Act of Parliament*; though it is not to be doubted, but if the *Rolls* of thoſe times were ſearcht, Diſpenſations formerly granted to thoſe Biſhops would be found amongſt them. But they ſtood them in no ſtead, becauſe contrary to the *Laws*, *Statutes*, *and Proviſions aforeſaid*. So that here the *King* and *Parliament* acknowledging that the *King* had no *knowledge or due Information or Inſtruction of the ſaid Statutes* (which is a modeſt and reſpectful way of expreſſing the *King's* doing an illegal thing) what elſe can we infer than that they diſown, and he diſclaims any *perſonal Prerogative* inherent in himſelf, to violate thoſe (and, conſequently other) *Laws* concerning *Eccleſiaſtical* Affairs? Which ſhews both that the King's *Supremacy* was not accounted any ſuch unbound-

ed

ed Power, as ſome fancy, and that the *Parliament* retain'd its ſhare in the Juriſdiction over *Eccleſiaſtical* Perſons and Things, notwithſtanding the reſtitution, recognition (or call it what you will) of the *Supremacy*.

I paſs by the Act of 31 *H.* 8. c. 14. whereby certain Opinions then accounted *Hereſie*, and Marriage of *Prieſts*, are brought within the compaſs of *Treaſon* and *Felony* (for that the inflicting of ſuch Puniſhments, for what Crimes or pretended Crimes ſoever, is an Act of Civil, not of *Spiritual* or *Eccleſiaſtical* Juriſdiction) and come to the Act of 32 *H.* 8. *cap.* 26. which laid the top ſtone of King *Henry the Eighths* Supremacy, and mounted it one ſtory higher than ever it was carried before or ſince. It was thereby enacted, that *All Decrees and Ordinances, which according to God's Word and Chriſt's Goſpel by the Kings Advice and Confirmation by his Letters Patents, ſhall be made and ordained by the Archbiſhops, Biſhops, and Doctors, appointed or to be appointed by his Royal Majeſty*, or elſe by the whole Clergy of *England*, (*nota bene*) *in and upon the matter of Chriſtian Religion, and*

and Chriſtian Faith, and the lawful Rites, Ceremonies, and Obſervations of the ſame, ſhall be in every point thereof believed, obeyed, and performed to all intents and purpoſes, upon the pains therein compriſed. Here Matters of *Doctrin* and *Worſhip* are given up to the *King's* determination and appointment. But he was to determine by ſuch Advice, as was appointed by the *Act*. And this Power was perſonal, died with him, and was never pretended to by any of his Succeſſors. It was given him by *Parliament*, who could not have given it him, if they had not had it themſelves: for there was no *Act* of *Convocation* in the caſe. He had it not before, for then there would have been no need of the *Act*. It is greater to give than to receive. They give it him with a reſtriction, that affords a good Argument againſt a pretended power in the *King*, of *diſpenſing* with all *Acts of Parliament* concerning matters of *Religion, viz. Provided that nothing ſhall be ordained or defined which ſhall be repugnant to the Laws and Statutes of the Realm.* It ſeems the *Parliament* at that time was ſo far from apprehending any power

power lodged in the *King*, either by vertue of any *inherent Prerogative*, or by vertue of his *Imperial Soveraignty*, or as incident to his lately recognis'd title of *Supreme Head*, of breaking through all *Acts of Parliaments* relating to *Religion* and *Ecclesiastical* Affairs, that now in the 32 Year of his Reign, when he had been declared the *Supreme Head* by *Act of Parliament* Six Years ago, when every *Act of Parliament* about *Church Matters* carried an acknowledgment of that Declaration in the front of it, when a Legislative Power as to Doctrine and Ceremonies was given him by *Act of Parliament*, yet even then when the *Supremacy* blaz'd like a Meteor, and had so malignant an influence, as to strike opposers dead, when it was armed with such a Power as never any *King* of *England* enjoyed before or since, yet then were *Acts of Parliaments* accounted so Sacred *that nothing was to be ordained or defined* by this new Legislative Authority *contrary to the Laws and Statutes of the Realm.*

And this very *Legiſlative Power*, owing its birth to a *Parliamentary* Conceſſion, which qualified it with a Reſtriction, which perhaps was not acceptable, is ſufficient to inform us that a *Parliament* can give more power and larger *Prerogatives* to the *King*, even in *Eccleſiaſtical* Matters, than he has by common right; and that's all the uſe that can be made of this *Act* now in our days.

The next Act is that of *Marriages*; *cap.* 38. of this Seſſion, the Conuſance of *Marriage* had time out of mind belonged to the *Spiritual Juriſdiction*; which was now veſted in a great meaſure in the *King's Perſon*; the executive part he might adminiſter by Commiſſioners delegated, by vertue of the Stat. of 26 *Hen.* 8. *cap.* 1. (as hath been ſaid) a *Legiſlative* Power was given him by 32 *Hen.* 8. *cap.* 26. But that *Act* did not enable him to make any binding Laws about Marriage, for the *Declarations, Decrees, Definitions, Reſolutions and Ordinances* which he was impowered to make *according to God's Word and Chriſt's Goſpel, with his Biſhops*

shops and Doctors to be appointed were only in *Matters of Christian Faith and the lawful Rites and Ceremonies of the same.* And the setting of the Degrees of Marriage not falling under either of those two Heads, *viz. Matters of Faith, or Ceremonies*; it was necessary there should be an *Act of Parliament* to make a Regulation therein.

The next Act is the 34 and 35 *Hen.* 8. *cap.* 1. 'which prohibits the 'selling or using of any Books of the 'Old or New Testament of *Tindal*'s 'Translation, or comprizing any Matter of Christian Religion, Articles 'of Faith or Holy Scripture, contrary 'to the Doctrin set forth since *Anno Dom.* 1540. or to be set forth by 'the King; prohibits the retaining any *English* Books or Writings concerning Matters against the Holy 'and Blessed Sacrament of the Altar, 'or for Maintenance of the *Anabaptists*, or other Books abolished by 'the King's Proclamation; forbids 'any thing to be taught contrary to 'the King's Instructions, *&c.* under

'severe Penalties. In which there is this farther Clause: 'And be it farther enacted, That the King's Majesty, our said Sovereign Lord that now is, King *Henry* the Eighth, 'may at any time hereafter at his 'Highness liberty and pleasure, change 'and alter this present Act and Provisions of the same, or any Clause 'or Article therein contained, as to 'his Highness most excellent Wisdom 'shall seem convenient, any thing 'in this Act to the contrary in any 'wise notwithstanding. So that a Power in the *King* of *Changing* and *Altering* (and consequently of *Suspending*, which in effect is *Repealing*) Acts of *Parliament* concerning Matters of *Religion*, unless given by a *Parliament*, is not according to the *Constitution* of our Government, nor is it a *Prerogative* inherent in the King of common Right: For if he had had such a Power in himself, this Clause (which no doubt, was put in by the King's Order) would have been vain and nugatory.

The

'The Act of 35 *Hen.* 8. *cap.* 16. 'gives the King Authority during his 'Life, to name Thirty two Perſons, *viz.* 'ſixteen Spiritual and ſixteen Tempo-'ral, to examine all Canons, Con-'ſtitutions and Ordinances Provinci-'al and Synodal, and to eſtabliſh all 'ſuch Laws Eccleſiaſtical as ſhall be 'thought by the King and them con-'venient to be uſed in all Spiritual 'Courts. This the King could not do by Vertue of the Act of 32 *Hen.* 8. *cap.* 26. For that *Act* gave him a Power concerning Matters of *Chriſtian Faith and Ceremonies* only: Nor could the *King* and the *Clergy* ſettle theſe *Canons* and *Conſtitutions*, without an *Act* of *Parliament*; for the *Laity* in all Matters *Eccleſiaſtical*, in all things of *Spiritual* Conuſance, were to be bound by them: Nor would the *Parliament* truſt the *King* and the *Spiritualty* to ſettle the *Canon Law*, without an equal number of the *Temporalty* added to them.

The next and laſt *Act* that I ſhall obſerve in this King's Reign, is the 37 *Hen.* 8. *cap.* 17. 'which *Act* re-'

citing, 'That the Archbishops, Bishops, Archdeacons and other Ecclesiastical Persons, have no manner of 'Jurisdiction Ecclesiastical, but by, under and from the King, Enacts, That 'all Persons, as well Lay as Married 'Men, being Doctors of the Civil Law, 'may lawfully execute and exercise 'all manner of Jurisdiction, and all 'Censures and Coercions appertaining 'to, or in any wise concerning the 'same, *&c.* any Law, Constitution or 'Ordinance to the contrary notwithstanding. What can be more purely *Spiritual* than exercising *Ecclesiastical Censures*, and yet this *King*, though he had a Personal executive Power given him in all Matters *Ecclesiastical* by the 26 *Hen.* 8. *cap.* 1. a Legislative Power in part, by the Statutes of 31 *Hen.* 8. *cap.* 8. and 32 *Hen.* 8. *cap.* 25. and a Power of Dispensing with the Canon Law, by the Statute of 25 *Hen.* 8. *cap.* 21. yet thought it convenient at least, to have the concurrence of his *Parliament*, in breaking through those Ordinances and Constitutions, whereby Lay-men and Married-men were

'disabled

'disabled to exercise any Jurisdiction 'Ecclesiastical, or be Judge or Regi-'ster in any Court commonly called 'Ecclesiastical Court.

I cannot well deny but that the King might have dispens'd with those Canons and Constitutions by Vertue of the Statute of the 25 *Hen.* 8. *cap.* 21. which impowered him to allow *the Archbishop of* Canterbury *to grant Licences and Dispensations even in Cases not wont to be dispensed in at* Rome: Nay, and these *Constitutions* whereby Lay and Married Men were disabled, as aforesaid, are in the Preamble of this Statute, said to be *utterly abolish'd, frustrated and of none effect, by a Statute made in the Twenty fifth Year of the Kings most Noble Reign:* By which seems to be meant the Nineteenth Chapter of the then Session of *Parliament*: 'And yet because 'the Archbishops, Bishops, Archdea-'cons, and other Ecclesiastical Persons 'practised the contrary; which might 'give occasion to some evil disposed 'Persons to think, and little to regard 'the Proceedings and Censures Eccle-'siastical, made by your Highness

'and your Vicegerent, Officials and 'Commiſſaries, Judges and Viſitors, 'being alſo Lay and Married Men, 'to be of little or none Effect or 'Force; Therefore it is ordained and 'enacted by Authority of this preſent 'Parliament, That all and ſingular 'Perſons, as well Lay as thoſe that be 'Married, being Doctors of the Ci-'vil Law, &c. The enacting of a thing by *Parliament* to ſilence all Doubts, to give credit to the Proceedings of ſuch Lay-men as then did actually exerciſe *Eccleſiaſtical* Juriſdiction by *Commiſſion*, or otherwiſe, ſhews ſufficiently, that even in Matters never ſo *Spiritual*, the *Act* of *King*, *Lords* and *Commons*, carryed a greater Authority than any *Commiſſion*, *Diſpenſation*, or other *Act* whatſoever proceeding from the *King* ſolely, and that at a time when the *Supremacy* was at the height.

There were many other *Acts* paſſed in this Kings Reign, concerning *Church men* and Matters confeſſedly of *Eccleſiaſtical* Conuſance, as 21 *Hen.* 8. *cap.* 5. concerning *Probates* of

of *Wills*. *Cap.* 6. Concerning *Mortuaries* taken by *Prieſts* and *others*. *Cap.* 13. Againſt *Pluralities* of *Benefices and taking of Farms by Spiritual Men*. 23 *Hen.* 8. *Cap.* 1. Abridging the Power of *Ordinaries*, and taking away the *Benefit* of *Clergy* in ſome Caſes. *Cap.* 9. That no Man be cited into any *Eccleſiaſtical Court* out of the *Dioceſs* wherein he dwells, unleſs in certain Caſes. *Cap.* 10. Concerning Feoffments and Aſſurances to the uſe of any *Church* or *Chappel*. 25 *Hen.* 8. *Cap.* 14. For the puniſhment of *Hereſie* and *Hereticks*, limiting the manner of proceeding againſt them, *defining what ſhall be Hereſie*, how it ſhall be puniſht, and abridging the Authority of the *Biſhops* and the *Canon Law*. *Cap.* 16. Concerning *Pluralities*. 26 *Hen.* 8. *Cap.* 3. For the payment of the *Firſt Fruits* of all *Dignities*, *Benefices*, *Promotions Spiritual and Tenths*, to the *King* and his *Heirs*, aboliſhing the *Pope*'s Uſurpation and Authority herein. *Cap.* 13. For aboliſhing the Priviledge of *Sanctuary* in

in Caſes of *High Treaſon*. *Cap.* 15. Againſt ſome *Exactions* of *Spiritual Men* within the *Archdeaconry* of *Richmond*. 27 *Hen.* 8. *Cap.* 8. That the *King's Spiritual* Subjects ſhall pay no *Tenths* whilſt they are in their Firſt Fruits. *Cap.* 19. Limiting *Sanctuaries* and *Sanctuary Perſons*. *Cap.* 20. Concerning the *Payment* of *Tythes* within the City and Suburbs of *London*. *Cap.* 28. For the ſuppreſſing of *Monaſteries*, *Prieries* and *Religious Houſes*, veſting their Revenues in the King, and erecting a Court of Augmentations. 28 *Hen.* 8. *Cap.* 10. For extinguiſhing the *Authority* of the *Biſhop* of *Rome*, preſcribing an Oath of Abjuration of it, and *Popery*, together with the *Pope's* Uſurpations, and excellently ſetting forth the *King's Supremacy* and *Parliaments Authority* in Matters *Eccleſiaſtical*. *Cap.* 11. For the Reſtitution of the Profits ariſing, during the Vacation of a Benefice to the next Incumbent. *Cap.* 13. Compelling *Spiritual Perſons* to reſide upon their Livings. *Cap.* 16. Re-

leasing such as had obtain'd pretended *Licences* and *Dispensations* from the *See* of *Rome*. 31 *Hen.* 8. *Cap.* 16. Enabling such as were *Religious Persons* to purchase Lands, to sue and to be sued in all manner of Actions, which they were disabled formerly to do by the *Common* and *Canon Law*. *Cap.* 9. Enabling the *King* to make *Bishops* by his Letters Patents, and to erect new Bishopricks, which he did. *Cap.* 13. For dissolving all *Monasteries* and *Religious Houses*, and vesting them in the *King*. *Cap.* 24. For abolishing diversity of *Opinions* in *Matters* of *Religion*, most fully and exactly demonstrating the *Parliaments Jurisdiction* in *Matters* of *Religion*. 32 *Hen.* 8. *Cap.* 7. For the true *Payment* of *Tythes* and *Offerings*. *Cap.* 10. For the *Punishment* of *incontinent Priests* and *Women* offending with them. *Cap.* 12. Concerning *Sanctuaries* and the *Priviledges* of *Churches* and *Church-Yards*. *Cap.* 19. Prescribing the manner of proceeding against *Heretricks*, and impugners of the *Act*

for

for abolishing of enormous *Opinions* in *Christian Religion*. *Cap.* 25. Dispensing with the *Marriage* between the *King* and the Lady *Ann* of *Cleve*. 33 *Hen.* 8. *Cap.* 29. For enabling *Religious Persons* to sue and be sued. *Cap.* 31. Severing the Bishopricks of *Chester* and the *Isle of Man* from the Jurisdiction of the Archbishop of *Canterbury*, and uniting them to the Province and Archbishoprick of *York*. *Cap.* 32. Making the Church of *Whitegate* a Parish Church by it self, and severing it from the Parish of *Over*. All these *Acts*, and perhaps some few not here enumerated, evince beyond all possibility of contradiction, that the whole Fabrick of the *English* Church, both as to the Doctrin, Discipline, Ceremonies, Censures, Rights, Jurisdictions, Endowments, Priviledges, &c. was from time to time ordered, moulded, governed, altered, improved or impaired, by Authority of *Parliament*, and not by the *King* in right of his meer *Supremacy*; nor by the *Clergy*, upon the score of any pre-

tended

tended Authority derived from from *Christ*, or from the *King* as SUPREME HEAD on Earth: That no one Pin was fastned in this Tabernacle, but according to what the *Legislative Body* of the *Kingdom* prescribed, and directed from time to time: That this Age had no other Notion of the *King's Supremacy* by common right, than our Fore-Fathers had before the *Pope*, and his Faction grew upon our Constitution: That many Powers and Authorities given to King *Henry* the Eighth by *Parliament*, which are now either abrogated or expired, as they shew, that our King's were not, nor are entituled to them of common Right, nor can justifie the executing any such Authority, by Precedents in his Reign, which were grounded upon Laws then in being, but which are now of no force; so they shew unquestionably, that there is a greater and more Soveraign *Supremacy* in Matters *Spiritual* and *Ecclesiastical*, in the *King* and both *Houses* of *Parliament*,

liament, than is lodged in the *King* himself, or in the *King* and *Convocation*. It appears farther, that those Temporary Powers given to that *King* expiring with him, and the *Act* of 26 *Hen.* 8. *Cap.* 1. being now Repeal'd, the Legal and Antient Jurisdiction of the *Crown* in Matters *Ecclesiastical*, is the same now that it was Five hundred Years ago, notwithstanding any thing that pass'd in this Reign; only that a new Course is now settled, and that by *Act* of *Parliament* too, for the Electing of *Bishops* and Prosecuting of *Appeals*.

Only one Thing more I shall add, *viz.* That in Matters *Spiritual*, as well as *Temporal*, several Resolutions of the Judges being grounded on Temporary *Acts* of *Parliament* then in being, following *Judges* both *Ecclesiastical* and *Civil*, meeting with such Resolutions, and not considering that those *Acts* upon which such Resolutions were made, were but

Temporary

Temporary or Repeal'd; they have made such *Judgments* to be *Presidents*, to graft their *Modern Opinions* upon.

FINIS.

FINIS.

An Answer to

CHAP. 4. SECT. 1.

Of a late

BOOK,

Entituled, the

King's Visitatorial Power Asserted,

By way of

APPENDIX.

SInce the foregoing Papers were Written, a late Mercenary Writer, One *Nathaniel Johnson*, Doctor in Physick, has publish'd a Book, Entituled, *The King's Visitatorial Power, Asserted*; in which Book he has inserted a long Section (how pertinent-

ly to his main design, in that Treatise, may perhaps be shewn hereafter) *concerning the King's Supremacy and Power in Ecclesiastical Causes, and Visitations*, page 144. &c. to page 160.

In which Section, because he pretends to set up an imaginary *Personal Supremacy*, quite different from what I have endeavoured to assert from some Remarks, upon *Ancient Histories*, and *late Acts of Parliament*, but agreeable enough with some Opinions that have been espous'd of late, and made use of to warrant some late Proceedings. I thought it might not be amiss to trace him through that *Section*, and submit to the Judgment of the Unprejudiced Reader, whether the *Doctor* has afforded the World a right Scheme of the King's *Ecclesiastical Supremacy*.

I beg the Reader's Pardon, if he meet with some few passages over again here, that were touch'd upon in the foregoing Discourse. I hope their usefulness will excuse the repetition of them;

them; and the Anſwer would not have been ſo clear without it.

He tells us (*pag.* 144.) that *long before the Reformation, ſeveral Kings of* England *permitted no Canons, or Conſtitutions of the Church, or Bulls and Breves of the Apoſtolick See, to be executed here* [without their Allowance.] Which I agree to be very true, only the Doctor ſaying [*without their Allowance*] implies (and it appears by the whole drift of his Diſcourſe in this Chapter, and indeed by the main Scope of his Book, that he would be underſtood) that *With their Allowance* ſuch *Canons* and *Conſtitutions*, *Bulls* and *Breves* might lawfully be Executed. Which I deny: And hope to make it evident, that *Our Kings* could not by their own *Perſonal Authority* let in upon their Subjects a *foreign* Juriſdiction.

He adds (*pag.* 145.) that *ſince the Supremacy has been Eſtabliſhed by Act of Parliament in the Crown, The Kings of* England *may according to the*

Laws in force, not only Exerciſe all the Powers they could, * *as Sovereign Princes; but likewiſe whatever the Pope* de jure, *if not* de facto *could, or did do, in the outward Regiment of Eccleſiaſtical matters; and conſequently,* that *whatſoever was done* in Viſitations *by the Authority of the Popes, Metropolitans, or Dioceſan Biſhops, may now be done by the Kings of* England, *as Supreme Ordinaries.*

* What Powers thoſe are, no Man knows but *Filmer, Brady, Johnſon, Hicks,* Sir. *Roger L'Eſtrange,* and a very few others of yeſterday.

Which is a very wild Aſſertion, and without the leaſt Foundation of Truth. He does not here ſpeak it out roundly, *That the King may by the Law do whatever the Pope* de facto *did;* but minces the matter a little by ſaying, *Whatever the Pope* de jure, [*if not* de facto] *could, or did do:* And, yet with the ſame breath, he ſays poſitively, that *whatever was done* in Viſitations *by Authority of the Pope, may now be done by the King.* So that however *the King* may be limited, and tyed up in other Parts of his *Eccleſiaſtical Juriſdiction,* to what the Popes *de jure* could do, *in Viſitations,* at leaſt he has Authority

rity to do whatever the *Popes*, *Archbiſhops*, or *Biſhops* actually *did*.

The Doctor did not conſider that the ſeveral Branches of *the Supremacy*, now reſtored *by Act of Parliament*, are guided, directed, and limited by poſitive and particular Laws, made about the time of the Reformation: And that the Act of *primo Elizabeth*, in that general Clauſe, which Reſtores *the Supremacy*, *Unites and Annexes* only *ſuch Juriſdiction, and Authority, as had, or might be* lawfully *Exerciſed by any Spiritual Perſon*, &c. Not that the *Pope* (to ſpeak ſtrictly) could Exerciſe any Juriſdiction *lawfully* within this Realm, for the Old Laws and Cuſtoms of the Realm, and the Statutes of *Premunire* and *Proviſors* were firm Bars to his Right; but a Juriſdiction may be *lawful* in it ſelf (that is (for ſo I would be underſtood) the Acts of a Perſon Aſſuming Juriſdiction, may be *lawful* in themſelves) conſidered ſeparate and a-part from *the Perſon* of him that Exerts it; though *the Perſon* Exerciſing ſuch Ju-

riſdiction, have no *legal* Authority. If an Uſurper ſhould poſſeſs himſelf of any Government, and carry on the Adminiſtration of it, in the ſame Method and Courſe of Juſtice, that the *Lawful Prince* did, or ought to do, in ſtrictneſs of Law there might perhaps be a Nullity in all his Acts; and yet, conſidered Abſtracted from *his Perſon*, his Government would be ſaid to be *lawful*; that is, according to Law, and the courſe of Proceedings, that had been ſetled, and obtained before his Uſurpation. So, whatever *the Pope* did in this Nation, as pretending to be *Head of the Engliſh Church*, which was not in it ſelf contrary to the *Law* of the Realm in Church, or State; but might *lawfully* be done, though not by him, is by the ſaid Act of *primo Elizabeth*, *United and Annexed*, to what? Why, *to the Imperial Crown of this Realm.* Whereas *by the Act of Supremacy* that paſſed in *King* Henry *the Eighths* time, *All ſuch Juriſdiction*, *Authority*, &c. was *perſonally* veſted in *the King, his Heirs and Succeſſors.* But of that diſtinction more

ſhall

ſhall be ſaid, God willing, ſome other time.

Purſuant to this imagination of the *Pope's* Power, being Tranſlated to *the King*, he tells us, that *latter Laws have devolved upon the King even the Power of the Pope* in foro externo, *pag.* 145.

He ſays (*pag.* 145, 146.) that *during the Schiſm* (in the Papacy between *Urban* and *Clement*) *King* William Rufus *claimed as other Princes did, a Right to declare to which Pope he would adhere*: And that *none ſhould be received, as Pope, in* England, *without his Licence and Election.* Here if I underſtand *the Doctor* aright, he takes for granted, that if there ſhould happen a *Schiſm* in the *Popedom*, the King might declare whether, or which of the Competitors himſelf thought fit, to be *Pope* within this Realm. Which I deny that he could do, without the *Aſſent* of the *Clergy and Laity* in a General Aſſembly.

He ſays (*pag.* 145.) that, *if the Archbiſhop of* Canterbury *called, and preſided in a General Council of Biſhops,* King William *allowed nothing to be appointed, or forbidden, unleſs they were accommodated to his Will, and were firſt ordained by him.* Theſe are the Words of *Eadmerus,* out of whom *the Doctor* Quotes them: (*Eadm. Lib.* 1. *Fol.* 6.) But if *the Doctor* would here inſinuate, as he does, and conſonantly to his own *Hypotheſis*, muſt mean, that the *King's Will* concurring with the Aſſent of *a General Council of Biſhops,* could make an *Eccleſiaſtical Law* to bind the whole Kingdom, without the *Aſſent of the Laity,* that is what I deny; and hope to make it very clear in the following Diſcourſe.

Whereas he ſays (*pag.* 145.) out of the ſame Author *Eadmerus,* that *King* William *ſuffered not any of his Barons, or Officers to undergo any Eccleſiaſtical Cenſure, but by his precept.* I hope it will appear, that this was not an Arbitrary Power aſſumed by the

the King, but that the Law of the Realm was ſo.

He ſays (*pag.* 146, 147.) that *the Oath of Fidelity, which* Anſelme *had taken to King* William Rufus, *was no ways like the preſent Oath of Supremacy.*

He ſays (*pag.* 148, 149.) *As to the legantine Power, it is apparent by ſeveral Inſtances, that none Exerciſed any here without the* King's *leave.* Which is true, and as true it is, and apparent by as many Inſtances, that the *King ſingly* could not give any ſuch leave.

He ſays (*pag.* 154.) that *What Viſitations were made of the Univerſity of* Oxford *by the* Pope's Legates, *do no ways infer that thereby the* King's *Power of* Viſiting *is Exauctorated, but that whatever they did was in Subordination to the King's pleaſure, or as ordain'd by his Laws.* The *Doctor* does well to disjoin the *King's Pleaſure* and his *Laws*, for they did not always agree. But this *Paragraph* muſt be

be altered to make it tolerable Sence; viz. *Whatever the legates did in Viſiting the Univerſity of* Oxford, *if it were not contrary to the King's Laws, was in Subordination to the King's Authority.*

Some other paſſages tending to the ſame purpoſe, with thoſe already taken notice of, will offer themſelves as we go along through the ſeveral parts of the Chapter.

Whereas the *Doctor* ſays, that *ſeveral Kings permitted no Canons, or Conſtitutions of the Church, or Bulls,&c. to be Executed here* [without their Allowance:] Intimating thereby that thoſe Kings might of their own *Perſonal Authority* give ſuch *Allowance*, And that [*with their Allowance*] Foreign *Canons* and *Conſtitutions* might be Executed here; I take leave to ſay, That it never was in the Power of a *King* of *England* legally to Subject his People to a Foreign Juriſdiction, nor to Oblige them to the Obſervance of any Law, without their own *Aſſent*: And therefore *the King's*

King's Allowance could not make a Foreign *Canon* Obligatory here, unleſs it were received by the People with their own *Aſſent:* Nor could his giving leave, legally Subject his People to Proceſſes from *Rome*, as will abundantly appear by and by.

But before I go on, I deſire the *Doctor* to take notice of an Old *Act of Parliament* (for ſuch it was, though the Word *Parliament* was not then in being amongſt us) made in King *Edward the Confeſſor's* Time, if not before, and Confirmed by King *William the Firſt: Debet Rex omnia ritè facere in Regno &* [per Judicium Procerum Regni.] *Debet enim Jus & Juſtitia magis regnare in Regno, quàm* voluntas prava. *Lex eſt ſemper quod jus facit: Voluntas autem, Violentia & Vis non eſt Jus.* And again in the ſame *Chapter*; *Debet Rex Judicium Rectum in Regno facere, & Juſtitiam* [per Conſilium Procerum Regni ſui tenere.] *Iſta verò debet omnia Rex in propriâ perſonâ, inſpectis & tactis Sacroſanctis Evangeliis, & ſuper ſacras & ſanctas*

reliquias

reliquias coram Regno, Sacerdotio & Clero jurare, antequàm ab Archiepiſcopis & Epiſcopis Regni coronetur. Lambard. de Priſcis Anglorum legibus, page 138. & page 142. Hence we ſee that *Judicium Procerum & Conſilium Procerum* are Eſſential to the *Engliſh* Government: Without which *Right* and *Juſtice* cannot Reign, but a *Perverſe Will* would Rule the Roaſt.

Prynn's Collect. Tom. 3. Pag. 158.

Hence it was that King *Edward the Firſt*, When Pope *Gregory the Tenth* ſent *Reymundus de Nogeriis* his Chaplain, as his *Nuntio* into *England*, &c. amongſt other things to Demand, and Receive from the *King* Eight Years Arrears of the Annual Tribute, and *Peter-pence* then due to the Church of *Rome*, Wrote to him a very remarkable Letter; In which, among other things, he tells him, That his laſt Parliament was Diſſolved the ſooner, by reaſon of his own Sickneſs, ſo that he could not then *Super Petitione cenſus ejuſdem deliberationem habere cum Prælatis & Proceribus Regni ſui*, ſine Quorum Com-

Communicato Consilio *Sanctitati Vestræ super prædictis* non possumus respondere, & *jure-jurando in Coronatione nostra præstito sumus Astricti*, quod jura Regni nostri servabimus illibata, *nec aliquid* quod diadema tangit Regni ejusdem absque ipsorum requisito Concilio faciemus. And therefore he deferred returning the *Pope* an Answer, till the next Session of *Parliament*; *Pro firmo sciturí*, *Pie Pater & Domine, quòd in alio Parliamento nostro, quod ad festum Sancti Michaelis intendimus celebrare*, habito & Communicato Consilio cum Prælatis & Proceribus memoratis, *Vobis super præmissis* ipsorum consilio *dabimus Responsionem*. By this Letter it appears, that whatever did *Diadema Regni tangere*, could not, nor ought to be done *sine Concilio Prelatorum & Procerum Regni:* By which, as is evident enough by the Letter it self, a *Parliament* is meant.

Now that the *Bringing in of Bulls* and *Executing Process from* Rome within the Realm, did *Diadema Regni tangere* with a Witness, will appear by

by perusing *the Statutes of Præmunire and Provisors.*

Anno 27 Edward *the Third*, cap. 1. *Because it is shewn unto Our Lord the the King, by the Grievous and Clamorous Complaints of the great Men and Commons, how that diverse of the People be, and have been drawn out of the Realm to Answer of diverse things, the Cognisance whereof appertaineth to the King's Court; and also that the Judgments given in the same Court be impeached in another Court*, [In Prejudice and Disherison of Our Lord the King and of his Crown] *and of all the People of his Realm, and to the Undoing and Destruction of the Common Law of the said Realm at all times used.*

Another *Statute* mentioning *Citations out of the Court of* Rome, and *Provisions of Benefices*, and *Offices in the Church*, says, that *by means thereof the Good Antient Laws, Franchises and Usages of the Realm have been greatly Impeached, Blemished and Confounded*, [the Crown of Our Lord the

the King abated] *and the great Men, Commons and Subjects of the Realm in Bodies and Goods damnified* 38 *Statute.* Edwardi tertii, *cap.* 1, 2, 3, 4.

The Statute of 16 *Rich.* 2. *cap.* 5. Entituled *Præmunire for purchasing Bulls from* Rome: *The Crown of* England *subject to none*; mentions frequently *All* these things, as being *to the Disherison of the King's Crown*, and against *his Crown and Regality.*

And therefore in the *five and twentieth Year of King* Edward *the Third, the Commons prayed the King, that since the Right of the* Crown of England *and the Law of the Realm was such, that upon the Mischiefs and Damages, which happen'd to his Realm he ought and was bound by his Oath*, with the Accord of his People in his Parliament, *thereof to make remedy and Law, That it may please him thereupon to Ordain remedy: Which he does accordingly by the* Assent of the Great Men and Commonalty *of the said Realm; having regard to a Statute made in the time of his Grandfather,*

father, (*Anno* 25*th.* Edward *the First*, *againſt Proviſions*) *which holdeth his force and was never Defeated, Repealed or Annulled in any Point, and by ſo much he is bounden by his Oath to cauſe the ſame to be kept, as the Law of the Land.* The Laws of *Præmunire* and againſt *Proviſions* were but *Declaratory Laws* of the *Uſages* of the Realm in oppoſition to Papal *Bulls*, &c. And here we ſee our Kings did not ſcruple to own that they were under the obligation of their *Coronation Oath* to ſee to the Execution of them.

Anno Grat. 1225. *Magiſter Otto, Domini Papæ Nuncius, in Angliam veniens, pro magnis Eccleſiæ Romanæ negotiis, Regi litteras præſentavit; ſed Rex cognito litterarum tenore, Reſpondit, Quod* ſolus non potuit *definire*, nec debuit, *negotium* quod omnes Clericos & Laicos Generaliter totius Regni tangebat. *Matth. Par. pag.* 325.

It was an Old Rule of Law in this Nation, the very Foundation upon which our Government is built,

built, and the only thing that differences Freedom from Slavery, that *Quod omnes tangit, ab omnibus tractari debet.*

And the Commons tell the King in *Statute Twenty fifth of Henry 8. cap. 21.* That *his Graces Realm Recognizing no Superior under God, but his Grace hath been, and is free from Subjection to any Mans Laws, but only to such as have been deviſed within the ſame, for the Wealth thereof, or to ſuch other, as by Sufferance of his Grace and his Progenitors, the People of his Realm had taken* at their free Liberty by their Own Conſent *to be uſed amongſt them, and had bound themſelves by long Uſe and Cuſtom to the Obſervance of the ſame, as to Laws Eſtabliſhed* by the ſaid Sufferance, Conſent and Cuſtom, *and none otherwiſe.*

And the Judges Reſolved in 12. *Jacobi primi*, that *the King could not change the Eccleſiaſtical Laws*

of the Realm. 12 *Co. Reports, pag.* But if he could let in *Foreign Canons*, and [by his Allowance] give them the force of *Laws* here, then he could change the *Ecclesiastical Laws* of the Realm, and then might the People be bound to *other Laws*, than such as *by their own Sufferance* and *Consent* they had submitted to; and then could the King do things *Solus*, which concern generally *all the Clergy and Laity* of England; If *the King's Allowance* could Subject his People to *Processes from Rome*, then he could by Law depart with *the Rights of his Crown*, which by his Coronation Oath he is bound to maintain, as he hath so often and so publickly acknowledged.

The *Doctor* tells us (*pag.* 145.) out of *Eadmerus*, *Lib. primo, pag.* 6. That *King* William *the Conqueror introduc'd this here, That none in his Dominions should own the Pope, but by his Command, Nor receive*

receive his Letters, Unleſs ſhewed firſt to him, And if the Archbiſhop of Canterbury *called and preſided in a General Synod of the Biſhops, he allowed nothing to be appointed or forbidden, unleſs they were accommodated to his Will, and were firſt Ordain'd by him, Nor ſuffered any of his Barons, or Officers to undergo any Eccleſiaſtical Cenſure, but by his Precepts.*

Theſe things he would repreſent to us, as *Arbitrary Conſtitutions* made by the *Sole* Authority of that *King*; whom a few Men of late have endeavoured to repreſent under a ſtrange Vizor. But theſe were really *Laws* made in his time by the ſame Authority, that made Laws in this Nation before he was Born, and after his Death. He cauſed *Leges Epiſcopales* to be amended: But how did he do it? Of his own Head, or by the Advice of ſuch only, as himſelf thought fit to conſult with? No; it was done *Communi Conſilio*, &

Consilio Archiepiscoporum, Episcoporum, Abbatum & omnium Procerum Regni sui. V. Seldeni Not. & Specileg. ad Eadmerum. pag. 167, 168. And the same Author in his *Titles of Honour, pag.* 580, 581, hath these Words; *viz.* "In the "Fourth Year of his (*King William the Conqueror's*) Reign, or "*Anno Domini MLXX.* (which "was the Year, wherein he first "brought the *Bishops* and *Abbots* "under the Tenure of *Barony*) "*Consilio Baronum suorum* (saith "*Hoveden* out of a Collection of "Laws, written by *Glanvill*, as also "the Author of the Book of *Litch-*"*field*) *fecit summoneri per universos* "*Consulatus Angliæ, Anglos Nobiles* "*& Sapientes & in sua lege eruditos,* "*ut eorum Jura & Consuetudines* "*ab ipsis audiret.* And Twelve "were returned out of every Coun-"ty who shewed what the Cu-"stoms of the Kingdom were, "which being written by the "Hands of *Aldred* Archbishop of "*York*, and *Hugo* Bishop of *Lon-*

"*don*,

" *don*, were *with the Assent of the* " *same Barons* for the most part, " confirmed in that Assembly, which " was a *Parliament* of that time. " And so much also is shewed by " that Law of King *Henry the First*; " *viz. Lagam Regis Edwardi vobis* " *reddo cum illis Emendationibus*, " *quibus Pater meus illam emenda-* " *vit* [Consilio Baronum suorum.] He goes on to shew other Instances of *Parliaments*, in King *William the First's* Time. And a few pages after (*pag.* 583.) calls one of these very Constitutions, which *Eadmerus* blames him for, " *A* " *Law made by King William the* " *First.*

Indeed the several *General Councils* held in his Time, of the *Clergy* and the *Laity*, for the making of *Laws*, and determining *Great Controversies*; the Confirming of *King Edward the Confessor's Laws*, of which one was (as hath been said) that all things were to be done *per Judicium & Consilium*

Procerum Regni, and the tenor of ſuch *Charters* of his as are extant, ſhew undeniably that, what Conſtitutions are ſaid to have been made by him, muſt be underſtood to have been made by him *More Anglico, cum Aſſenſu Ordinum Regni*: As *Mr.* Selden *expreſſeth himſelf in his Book* de Synedriis.

The Firſt of theſe Four Conſtitutions complained of by *Eadmerus*, as Innovations, is, *That none in his Dominions ſhould own the Pope but by his Command.* And yet afterwards, when in King *Henry the Second's* Time there was a Schiſm in the Popedom, between *Alexander* and *Victor*; of whom the latter having been Elected and Declared *Pope*, by a Council of *German* and *Italian* Biſhops at *Papia*, the Emperour *Illuſtres Francorum & Anglorum Reges omnibus modis ſollicitare curavit, ut ad perpetuandam amicitiam mutuam ſibi hac in parte concordes exiſterent. Illi celebrem ex utroque Regno Epiſcopo-*

rum

rum & Nobilium, loca & tempore congruo, conventum fecêre; where the Matter was debated *in Conſpectu Regum & Præſulum, coram Univerſâ, quæ convenerat, multitudine Cleri & Populi*: And *Alexander* was admitted as *Pope*, and the Schiſmaticks Excommunicated. *Nubrig. lib. 2. cap. 9.*

And after that, in King *Richard the Second's* Time, When there was another Schiſm betwixt *Urban* and *Clement*, This Memorable Act of Parliament paſſed to declare *Urban* the true *Pope*;

VIZ.

Pur ceo que noſtre Seignor le Roy ad entendus, cybien per certains Letters Patents novelment venus de certain Cardinalx rebells contre noſtre Saint Pere Urban a ore Pape, come auterment per comen fame, que diviſion & diſcord ſont parenter noſtre dit Saint Pere & les dits Cardinals, les queux ſ'afforcent

a tout lour poar de depoſer noſtre dit Saint Pere de l'Eſtate de Pape, & d'Exciter & commover per lour meyns verrois ſuggeſtions les Roys & Princes & le Peuple Chreſtien encounter luy, a grand perill de lour anims, & a treſmale enſample ; Noſtre Seignor. le Roy fiſt monſtre ſes dites Letters as Prelates, Seignors & autres Grand Sages de ſon Royalme eſteant a dit Parlement, Et vewes & entendus les Letters avant dits, Et ewe molt deliberation ſur la matter eſtoit per Les dits Prelates prononciez & publiez per pluſors grands & notables reaſons illeoques monſtrez en plein Parlement ; cy bien per matter trove en les dites Letters que autrement, que le dit Urban etoit ducment eſleu en Pape, & que enſy eſt, & doit etre veroy Pape, & luy come Pape & Chef de Saint Egliſe Pon doit accepter & obeyir. Et a ceo faire s'accordent touts les Prelates, Seignors, & Communs en la Parlement avant dit, &c. Stat. 2. Rich. 2. cap. 7.

Here

Here the *Whole Parliament* heard the Reaſons debated, and after a full Hearing agreed to admit *Urban.* Now whereas the Government, as to the Eſſential parts of it, was in King *William the Conqueror's* Time, the ſame that it is now, ſaving ſome Inroads that have ſince been made by the *Prerogative*; And whereas in times ſubſequent to his, the *King* in *Parliament* determined who ſhould be received as *Pope*, and who not; And ſince there is nothing more common with the *Monks*, than to mention things as done by Our *Kings*, which were either *Judicial Acts* of their *Courts*, or done by them in their *Great Councils*, and conſequently were *Acts of Parliament* (of which ſome Inſtances will be given hereafter in this Diſcourſe) upon what Grounds can any rational Man conceive otherwiſe, than that the Conſtitution afore-mentioned to be made by King *William the Conqueror*, was *a Law*, or an *Act of Par-*

Parliament made in his Time, And that his *Commanding* who ſhould be owned as *Pope* within his Dominions, was to be a Command by him in *Parliament*; ſince the Law in his Time was ſuch, That the King was to do all publick things no otherwiſe, than *per Judicium & Conſilium Procerum Regni.*

The Second Complaint of *Eadmerus*, is, That *None ſhould receive the Pope's Letters, unleſs they were firſt ſhewed to him.* By which if Letters of *Proviſion* only are meant; I ſhall have occaſion to ſpeak further of them hereafter. If all *Proviſions* and *Proceſs* from *Rome* be meant, then was not this introduced by *King William*, for that the bringing in of *Bulls*, *Citations*, *Exemptions*, *Faculties*, *Diſpenſations*, *Proviſions*, &c. from *Rome*, was in thoſe Days, and antecedent to this Conſtitution, contrary to Law, and in Derogation of the *Rights of the Crown*, and the *Liberties of the People*:

Nor

Nor could the ſhewing them to the *King* and his *Perſonal Approbation*, or *Allowance*, give them any *Legal* Authority within this Kingdom, and conſequently the Concurrence of the Great Council muſt be here underſtood, though not expreſſed by the *Monk*.

The Third is, That *If the Archbiſhop of* Canterbury *called and preſided in a General Synod of the Biſhops, he allowed nothing to be Appointed, or Forbidden, unleſs they were accommodated to his Will, and were firſt Ordain'd by him.* Which is ſuch another Law, as that of the *Twenty fifth of King Henry the Eighth, cap.* 19. That *the Clergy ſhall not preſume to Attempt, Alledge, Claim, or put in Ure any Conſtitutions, or Ordinances, Provincial, or Synodal, or any other Canons, nor Enact, Promulge, or Execute any ſuch Canons, &c. in their Convocations, &c. without the King's Aſſent.* This Law of *King Henry the Eighth*, was not Introductory

of

of a new Law; for there *the King's Humble and Obedient Subjects of the Clergy of this Realm of* England *acknowledged* [According to Truth,] *that the Convocations of the same Clergy, are, always have been, and ought to be Assembled by the King's Writ*: And that their *Promise in* verbo sacerdotii *that from thenceforth they would not presume to Attempt, Allege, Claim, or put in Ure, Enact, Promulge, or Execute any New Canons, Constitutions*, &c. *unless the King's most Royal Assent and Licence may to them be had*, &c. was but in Affirmance of the Old Law of the Realm, even before King *William* the Conqueror's Reign, appears abundantly by Sir *Henry Spelman's Councils*, where (I think) no Ecclesiastical Laws appear to have been made without the *King's Assent* before the Conquest, nor for some Reigns after.

His

His Fourth Complaint, is, That *He would not ſuffer any of his Barons, or Officers to Undergo any Eccleſiaſtical Cenſure, but by his Precept.* This was afterwards One of the Laws of *Clarendon. Vid. Decem Script. pag.* 1387. *Matth. Par* 100. And the reaſon of it, given by *Radulphus de Diceto*, is, *Ne Rex ignorantiâ lapſus Communicet Excommunicato. Decem Scriptor. pag.* 596. This *Mr. Selden* calls *a Law firſt made by King William the Firſt. Titl. of Honor, pag.* 583.

The *Doctor* (*pag.* 145, 146, 147.) relates the Controverſie betwixt King *William Rufus*, and *Anſelm* in ſuch a manner, as *If the Epiſcopi, Abbates & Principes Regni* had had no more to do in it, than to carry Meſſages betwixt him and the King. Whereas upon *Anſelm*'s deſiring to go and fetch his *Pall* from *Pope Urban*, whom the Nation had not then received for *Pope*, When the King told

told him that he could not keep the Faith, which he owed to him, *Simul & obedientiam Apoſtolicæ ſedis contra ſuam voluntatem, Anſelmus petivit inductas ad iſtius rei examinationem, quatenus Epiſcopis, Abbatibus, Cunctiſque Regni Principibus unà coeuntibus,* [communi Aſſenſu definiretur,] *utrum ſalvâ reverentiâ & obedientiâ ſedis Apoſtolicæ poſſet fidem terreno Regi ſervare, annon?* For *Anſelm*, whilſt he was Abbot of *Bec* in *Normandy*, had ſubmitted to *Urban*, as *Pope*, and (as he told the *Parliament* afterward) had profeſſed as much, when the *King* and they choſe him *Archbiſhop*. This Queſtion betwixt the *King* and Himſelf, he deſired *the Parliament* might decide. *Dantur ergo Inducinæ, atque ex Regiâ ſanctione fermè totius Regni Nobilitas quinto Idus Martii pro ventilatione illius cauſæ in unum apud* Rochingham *coit.* And the Matter was diſcuſſed and debated before them. *Vid. Eadmer. pag.* 25, 26, 27, 28, 29, &c.

The

The *Doctor* tells us (*pag.* 146.) that *When in the ſame King's Reign, the Archbiſhop was Sollicitous to have leave to go to* Rome, *and Viſit the Succeſſor of St.* Peter, *for the being better Inſtructed in the Government of the Church; he received Anſwer from the King, That if he went he ſhould for certain know, that he would ſeize his whole Archbiſhoprick into his Hands, nor would he receive him for Archbiſhop any more, like as now the Writ* Ne Exeat Regnum *is uſed with a Penalty ſpecified.* Notwithſtanding which the *Archbiſhop* went beyond Sea, and the *King* was as good as his Word. This the *Doctor* ſays, *may be a document to ſome, not obſtinately to oppoſe their Prince.*

But now, if by the Law of the Land, no *Archbiſhop*, *Biſhop*, or other *Great Man*, might depart the Realm without the *King's* leave, then did *Anſelm's* contempt con-

conſiſt in Diſobeying the *Law*, and not the *King's Perſonal and Arbitrary Will and Pleaſure.*

If any Man depart the *Realm* at this Day, after a Writ of *Ne Exeat Regnum* ſerved upon him, he becomes *a Fugitive*, and the *King* may ſeize his *Eſtate*, as he did the *Archbiſhops Temporalities.* And yet we have no *Act of Parliament* for this now upon *Record*, but Cuſtom Time out of Mind, which we call *Common-Law.* Yet among the Laws of *Clarendon*, this is one;

VIZ.

Archiepiſcopi, Epiſcopi & Perſonis Regni non liceat Exire Regnum, abſque Licentia Domini Regis. Decem Scriptores. pag. 1386, 1387. *Matth. Pariſ. pag.* 100.

And *Polydore Virgil, pag.* 171. carries this *Law* up as high as to the Reign of King *William Rufus*; *Publico*

Publico Edicto Vetuit (says he) *Unumquemque ſine Licentiâ ſuâ, Ex Angliâ egredi; qui mos lexve dicitur, Ne Exeas Regnum: Quæ adhuc, cùm ita res requirit, uſurpatur.* And it appears by the *Regiſter*, *Fol.* 193, 194. That *Religious Perſons* purchaſed Licences to go beyond the Sea.

And *Bracton* tells us, *Lib. Quinto, Fol.* 413. *b.* That thoſe Writs were *de Communi Conſilio totius Regni Conceſſa & Approbatæ*. Of which more hereafter. And great Reaſon there was, that they, who were then ſtrugling with the Government, to Introduce a *Foreign Juriſdiction*, ſhould, when they went beyond Sea, *Aſſecurare Regem, quod nec in eundo, vel redeundo, vel moram faciendo, perquirerent malum ſive damnum Domino Regi. Conſtitution. Clarend. Suprad.* But (as Mr. *Selden* ſays in his *Metamorphoſis Anglorum*, *pag.* 237.) *Huc referas* (Scil. ad temp. Henrici Secundi) *an cum Polydoro ad Rufum,*

an ad posteriora tempora rescriptum, quod in Regesto, NE EXEAS REGNVM, habetur, haud ità multùm interest, nec quæstionem accurare operæ pretium est; Quis enim ἐκ τοῖς tam ἀδήλοις verum potis est elicere? It being almost impossible to find out the Original of this *Law*; and it appearing by the *Register*, that whenever it did begin, it began *by Authority of Parliament*; and since nothing is known to the contrary, but that it might begin in King *William Rufus* his Time, to whose Time *Polydore Virgill* refers it; and, if it did not, since *Parliaments* were frequently held then, and *One* famous one at *Rochingham* during this very Controversie betwixt the *King* and *Anselm*, (*Eadmer. pag.* 38.) about his going to *Rome*, in which he asked leave to depart, and was denyed it; Who knows but there might then be a particular *Prohibition* to him by the King in that *Great Council*? But be that how it will, the Truth in this

Matter

Matter lies too deep, by reaſon of the loſs of almoſt all the *Civil Laws* made in the Reigns of Our Firſt *Norman* Kings, through the Embezelment of *Records*, and the Careleſſneſs of the *Monks* of thoſe times, for the *Doctor* to draw a good Argument from hence of the Danger of diſobeying the King's *Perſonal Command*.

Nay further, if this Inſtance were never ſo much for him; *Firſt*, It was in King *William Rufus* his Reign, the Irregularities and Tyranny of whoſe Government, was ſuch, and the Matters of Fact ſo lamely Reported to us, that no Argument drawn from what he might do, will be very concluſive to the Legality, or Illegality of any thing. And, *Secondly*, There is a very good Law made ſince,

VIZ.

Ann. 14 *Edwardi* 3. *cap.* 6. to Protect the *Clergy* from incurring any ſuch prejudice for the future, for not doing *whatſoever they are bid to do: We Will and Grant for Us and our Heirs, that from henceforth We, nor our Heirs ſhall not take, nor cauſe to be taken into our Hands the Temporalities of Archbiſhops, Biſhops, Abbots, Priors, nor other People of Holy Church, of what Eſtate or Condition they be, without a Juſt and True Cauſe,* [according to the Law of the Land] *and Judgment thereupon given.*

The *Doctor* makes account (*pag.* 146, 147.) that the *Oath*, which he ſays *Anſelm* had taken, whereby he promiſed the *King*, *ſe uſus ac leges ſuas uſquequaque deinceps ſervaturum, & eas ſibi contra omnes homines fideliter defenſurum*, was no ways like the preſent *Oath of Supremacy*. Whereby he would repreſent

Eadmer. pag. 39. *lib.* 2.

preſent the *Supremacy* as a quite other thing, and much more Exorbitant, ſince the *Reformation*, than it was in King *William Rufus* his Time; Which is a great Errour. For the *Eccleſiaſtical Juriſdiction* of the Kings of *England*, was then almoſt entire and *in puris naturalibus*; Foreign Juriſdiction had not then grown upon our Conſtitution: The *Biſhops* indeed were warping *Rome-wards*, which cauſed the Government to have a watchful Eye upon them, and to enjoyn *Oaths* upon them for ſecurity, againſt *Uſurpations* then feared, becauſe attempted; as after the *Reformation* they were enjoyned to prevent the return of them. But the *Oath of Supremacy*, preſcribed by *primo Elizabeth*, being only *to Aſſiſt and Defend all Juriſdictions, Priviledges, Prehominencies and Authorities, Granted, or Belonging to the Queens Highneſs her Heirs and Succeſſors, Or United and Annexed to the Imperial Crown of this Realm*, is the ſame in Subſtance with Swearing

in King *William Rufus* his Time, *to Keep and Defend the Laws and Usages of the Realm.* For those *Jurisdictions, Priviledges; Prehemi-nencies and Authorities,* which, having been torn from the *Crown,* were restored by the *prima Elizabeth;* and by the several Acts of King *Henry the Eighth* thereby revived, were in being, and actually enjoyed in King *William Rufus* his Time, and before and for some time after. He was the *Supreme Governour of the Realm in Spiritual, or Ecclesiastical Things and Causes, as well as Temporal.* Witness that Law of King *Edward the Confessor,* revived and confirmed by King *William* the First: *Rex, quia Vicarius summi Regis est, ad hoc est Constitutus, ut Regnum terrenum & populum Domini, & super omnia Sanctam Veneretur Ecclesiam ejus & Regat, & ab injuriosis defendat, & malefícos ab eâ evellat, & destruat, & penitùs disperdat. Lambard. leg. pag.* 142. And the several Branches afterwards lopped off from the

the *King's Supremacy*, were endeavoured to be preserved and secured by the Laws of *Clarendon*. The Third Chapter of which provides against the *Exemption of Clerks* from the King's Justice: The *Eighth* against *Appeals to Rome*: The *Twelfth* secures the *King's* Right and Interest in the *Elections of Archbishops, Bishops, Abbots, and Priors*, &c. These *Constitutions*, then called the *Avitæ Consuetudines Regni*, Archbishop *Becket promisit in verbo sacerdotali de plano se velle custodire. Similiter Episcopi promiserunt & Juraverunt. Gerv. Dorob. Coll. pag.* 1366. This was no other than the Modern *Oath of Supremacy*, without any material difference. The Archbishop did not pretend that the Laws of *Clarendon*, as Wicked and Unjust as he might think them, were any other than Explanations and Assertions of the *Ancient Usages* of the Realm. His *Suffragans* tell him in a Letter, That the King desired only *dignitates Regibus ante debitas sibi exhiberi.*

biberi. Hoved. pag. 292. *b.* And in another Letter to the *Pope* on the *King's* behalf, they declare the ſame, *ibid. pag.* 292, 293. Our *Archbiſhops* indeed uſed to fetch their *Palls* from *Rome*, but that Entitled the *Pope* to no Juriſdiction here. So that the Subject Matters of the Laws of *Clarendon*, then Enacted into *Statute-Laws*, were in King *William Rufus* his Time the *Laws and Uſages of the Realm*, and therefore *Anſelm's* and *Becket's Oaths* were *in Subſtance* the ſame: And thoſe *Laws and Uſages* having been uſurp'd upon ſince, and the Uſurpation purged by the Laws made about the time of the *Reformation*, *the Oath of Supremacy* is now the ſame *in Subſtance* with thoſe *Ancient Oaths* aforementioned. Not but that the *Eccleſiaſtical Juriſdiction*, in ſome of its Branches may now be ſettled in another courſe of Adminiſtration, than it was ſo long ago. But thoſe Alterations (which yet are not very conſiderable) have been made

made by *Acts of Parliament*; by which if Men had been content to ſtand or fall, many Notions, that are now too rife amongſt us, would never have been hatched.

The Writ from *R. de Glanville* to the Abbot of *Battle* (mentioned by the *Doctor pag.* 148.) whereby he Commands him on the *King's* behalf, by the Faith which he owed him, not to proceed in the Cauſe that was depending betwixt the Monks of *Canterbury* and the *Archbiſhop*, *donec inde mecum fueris locutus*, was no other than a *Prohibition* to him to proceed in a Cauſe depending before him, and the Abbots of *Feverſham* and *St. Auguſtine*, as Judges appointed by the *Pope* to hear and determine it. They had cited the *Archbiſhop* to appear before them, they had ſent him *Comminatoriam Epiſtolam, eique diem peremptorium præfixerant*. They had no *Legal Authority* to Exerciſe Juriſdiction within the Realm; for the *Pope* could

could give them none: And therefore the *Chief Justice* prohibits them in the *King's* Name. The Writ may be Read in *Chron. Gervas. Coll. pag.* 1503. from whence the *Doctor* Quotes the Story: Though he relates it Knavishly enough. *We find a Writ* (saith he) *to the Abbot of Battle*, &c. *wherein he Commands him on the part of the King, by the Faith which he owes him, and by the Oath, which he made to him, to do what he then enjoyned.* Never telling us that the thing enjoyn'd, was the keeping of his *Oath*, and observing the *Law*, and that the Method observed by the *King* in sending him this *Injunction*, was according to the Ordinary course of Justice, and of proceedings at Law in the like Cases. But the *Doctor* would raise a little Dust by this, and a few other such pitiful Scraps, to amuse his Readers, and create an Opinion that the *King* may enjoyn any thing.

As

As to the *Legantine Power* (he ſays, *pag.* 148.) *It is apparent by ſeveral Inſtances, that none Exerciſed any here without the King's leave, whether by the Grant of Pope* Nicholas *to* Edward *the Confeſſor, he diſputes not.*

But the *Doctor* takes for granted, that *with the King's leave* a *Legate* might be ſent and Exerciſe his Office here. Though what he Quotes for it out of *Eadmerus pag.* 125, 126. concerning what paſſed betwixt King *Henry the Firſt*, and *Pope Calixtus* at *Giſors*, makes nothing for his purpoſe. *Rex à Papa impetravit, ut omnes Conſuetudines, quas Pater ſuus in Angliâ habuerat & in Normanniâ, ſibi concederet, & maximè ut neminem aliquando legati Officio in Angliâ fungi permitteret, ſe non ipſe, aliquâ præcipuâ querelâ exigente, & quæ ab Archiepiſcopo Cantuariorum, cæteriſque Epiſcopis Regni terminari non poſſet, hoc fieri*

à

à Papâ poſtularet. The coming in of a *Legate* at the *King's* Requeſt, to determine ſome great and difficult Controverſie in particular, which could not be decided by all the Biſhops of *England*, is one thing; and the coming in of a *Legate* with a General Power to Exerciſe Juriſdiction over all the *King's* Subjects, and to hold a Legantine Court is a quite other thing.

The *Doctor* ſays (*pag.* 151.) that *Anno Domini* 1138, & *Tertio Regis Stephan.* Albert or Alberic *Cardinal of* Hoſtia, *was the Pope's Legate and Conſecrated* Theobald *Archbiſhop of* Canterbury, *and called the Clergy to a* Colloquium *by Apoſtolical Authority, by which it appears*, ſays he, *That the Canons of the Church now obtained, and the King Aſſented to the Powers the Legate had, ſo that what was Decreed had the King's Allowance.* It ſeems, provided what was Decreed had the *King's Allowance*, all was

was well, and there needed no more. But *Gerv. Dorobern. Coll. pag.* 1344. tells us that *Prædictus Albericus Apoſtolicâ Legatione functus venit in Angliam, Domini Papæ litteras ad Regem deferens; lectis itaque litteris* coram Rege & Primoribus Angliæ, *licèt non in primis, vix tandem pro Reverentiâ Domini Papæ ſuſceptus eſt.* So that this *Legate* was admitted by the Conſent of the *Primores Angliæ*, as well as of the *King*. And conſequently, his Exerciſing his Office here, with ſuch *Aſſent*, as aforeſaid, is no Argument, that the *King's Perſonal Aſſent* to his Powers, without the Concurrence of his *Primores*, would have made them ever a whit the better. And when this *Legate* Celebrated his *Synod* at *Weſtminſter*; there were preſent *Epiſcopi diverſarum Provinciarum, Numero XVII, Abbates ferè XXX, & Cleri & Populi Multitudo Numeroſa.* See *Spelman's Councils, Volume the Second, pag.* 39. and *Gerv. Dorobern. Collect.*

Collect. pag. 1347. So that as the *Assent* of the *Primores* was had to his Entry, so the *Multitudo Numerosa Cleri & Populi Assented* to the *Canons* then made. And the *King's single Assent* to either would not have been sufficient.

Besides this, I shall take leave to oppose the Judgement and Opinion of King *Henry the First* to that of the *Doctor*, concerning the *King's* having, or not having Authority to *Admit* a *Legate* hither from *Rome*. When in his Reign *Petrus*, *Monachus Cluniacensis* came hither from *Pope Calixtus*, with a *Legantine Power*, *perductus ad Regem*, *dignè ab eo susceptus est*; *Et expositâ sui adventûs causâ*, *Rex*, *obtensâ expeditione*, *in quâ tunc erat* (*nam super Walenses eâ tempestate exercitum duxerat*) *dixit se tanto negotio operam tunc quidem dare non posse*, *cum Legationis illius stabilem Authoritatem non nisi per* conniventiam Episcoporum, Abbatum & Procerum ac totius

tius Regni Conventum *roborari poſſe conſtaret. Eadmer. Lib.* 6. *pag.* 137, 138. He tells it him as a known Truth (*conſtaret*) that his *Legacy* could not be of any validity in this Nation, without the *Conſent of the whole Kingdom in Parliament*: Which, by reaſon of his Wars with the *Welſh*, he was not then at leiſure to call. The Words following are Remarkable;

VIZ.

Super hæc patrias Conſuetudines ab Apoſtolicâ ſede ſibi conceſſas, nunquam ſe æquanimiter amiſſurum fore teſtabatur (in quibus hæc, & de maximis una erat, quæ Regnum Angliæ liberum ab omni legati ditione conſtituerat) donec ipſe vitæ præſenti ſupereſſet. So that this *Patria Conſuetudo* of the Kingdoms being free from the Juriſdiction of any *Legate*, and which had been confirmed by the *Pope*, was not a Priviledge Granted to the

King

King himſelf, nor was he the Object of that Papal pretended Indulgence; but the Kingdom, whom he declares that himſelf could not deprive of the Benefit thereof, without their own *Conſent*. And therefore the King's *Aſſent* and the King's *Leave*, ſo frequently mentioned in the *Monks* upon this occaſion, muſt be underſtood of his *Aſſent in a Great Council, or Parliament*.

Hence it was, that when *Johannes Cremenſis* came *Legate* hither *Anno Domini* 1125. And was permitted ſo to do by the *King*, being then in *Normandy* (for what private conſiderations betwixt the *Pope* and himſelf, I know not) it was look'd upon by the Wiſe Men of the Nation, as a notorious breach of the Antient and known Laws and Liberties of the Kingdom.

Quam gravi multorum mentes ſcandalo vulneravit, & inuſitata negotii

gotii Novitas, & Antiqui Regni Anglorum detrita libertas ſatis indicat. Toti enim Regno Anglorum & circumjacentibus Regionibus cunctis notiſſimum eſt, eatenùs à primo Cantuarienſi Metropolitano Sanctiſſimo Auguſtino, uſque ad iſtum Wilhelmum (Cantuarienſem Archiepiſcopum) omnes ipſius Auguſtini Succeſſores Monachos, Primates & Patriarchas nominatos, & habitos, nec ullius unquam Romani legati ditioni addictos. Gervaſ. Dorob. Collect. pag. 1663.

And when afterwards in King *Henry the Third's* Time *Circa feſtum Apoſtolorum Petri & Pauli Otto ſancti Nicholai in carcere Tulliano Diaconus Cardinalis, neſciebatur ad quid*, per Mandatum Regis *venit* Legatus *in Angliam*, [Neſcientibus Regni Magnatibus,] *plures adverſus Regem Magnam conceperunt indignationem, dicentes; Omnia Rex pervertit, Jura, fidem, promiſſa in omnibus tranſgreditur. Nunc* Nota bene. *ſe matrimonio* ſine *ſuorum amicorum* & hominum naturalium conſilio

Alienigenæ copulavit ; Nunc Legatum, *Regni totius immutatorem*, [clam] *vocavit*, &c. *Dictum est autem quod Archiepiscopus Cantuariensis Edmundus Regem talia facientem increpavit, præcipuè de Vocatione* Legati, *sciens inde in suæ dignitatis præjudicium magnam* Regno *immineri Jacturam. Matth. Par.* 440. The Historian blames those that went to meet this *Legate*, and that made him Honourable Presents of *Scarlet Cloath*, &c. *In quo facto* (says he) *nimis à multis meruerunt reprehendi, tam pro dono, quàm pro dandi modo, quia in panno & ejus* colore *videbatur legationis Officium & Adventum acceptari.* Which is a remarkable testimony, that the *King's* calling in a *Legate* did not, in the judgment of those times, give him any *Legal* Authority here, if it were done *Nescientibus Regni Magnatibus : i. e.* (to speak in *Eadmerus* his Words) if he were otherwise admitted than *per Conniventiam Episcoporum, Abbatum & Procerum & totius*

tius Regni conventum. The ſame Hiſtorian (*Matth. Par.*) ſpeaking afterward (*pag.* 446.) of the ſame Legate, *Rex* (ſays he) *ſpreto naturalium hominum ſuorum conſilio, magis & magis, ut cœpit, deliravit: Et ſe voluntati Romanorum, & præcipuè* Legati, *quem* inconſultiùs *advocaverat, mancipavit*, &c. And again, *His & aliis deliramentis Rex omnium Nobilium ſuorum corda cruentavit. Conſiliarios quoque habuit ſuſpectos & infames, qui hujus rei fomentum eſſe dicebantur, quos ideircò magis habebant Nobiles Angliæ exoſos.*

But the Inſtance, which the *Doctor* himſelf gives (*pag.* 154.) of *Henry Beaufort* Biſhop of *Wincheſter*, and Great Unkle to King *Henry the Sixth*, is as full againſt him, as any thing that he could have pitch'd upon. For that *Biſhop*, being *Cardinal of St. Euſebius*, was ſent *Legate* into *England Anno* 1429. Which was *Anno Octavo of King Henry the*

Sixth: And was fain to be beholden to an *Act of Parliament* for his *Pardon*, for having offended against the *Laws* made against *Proviſors*, by bringing in and Executing *Papal Bulls* within the Realm. For *Anno* 10. *Henr.* 6. *The King*, [by the Common Aſſent of all the Eſtates] *pardoneth to the ſaid Cardinal all Offences, Puniſhments, and Pains incurred by him againſt the Statutes of Proviſors. Vid.* Cotton's *Abridgement of Records*, 10. *Henr.* 6. *nu.* 16. Which would have been needleſs, if either the *King's* giving *leave* to his Entrance, or *Aſſent* to his Decrees, could have juſtified his Proceedings, and added any *Legal* Authority to them.

By what has been ſaid, I conceive it to be very clear, that all *Foreign Juriſdiction* being utterly *againſt the Law of the Realm*, and an intolerable Uſurpation upon the *King's Crown* and *Regality*, and upon *the Rights and Liberties* of his Subjects,

Subjects, it was never conceived that the *King* could by his own *Perſonal Authority*, without the *Conſent* of his People in *Parliament*, ſubject them to it; no more than he could ſubject himſelf and his *Crown* in *Temporal Matters*. Which that he could not do, we have theſe two Remarkable Authorities.

When after the Death of *Alexander the Third*, *King* of *Scots*, the Succeſſion to that *Crown* was in diſpute, and Ten ſeveral Competitors claim'd it; and that *Edward the Firſt*, *King of* England challenged a Juriſdiction of determining to which of them the Right of Succeſſion appertained; the *Pope* that then was, pretended that it belonged to him, in Right of his *Apoſtleſhip*, to decide the Controverſie; and Wrote to the *King* a Letter, requiring him to deſiſt any further Proceeding therein: In anſwer to which Letter of the *Pope*,

the *King* wrote a long Letter containing Hiſtorical Proofs of his being Supreme Lord of *Scotland*, and that the *King* of *Scots* was his *Homager*; and at the ſame time *the Parliament* of *England*, then Aſſembled at *Lincoln*, wrote another Letter to the *Pope* upon the ſame Subject: In which are theſe Words;

V I Z.

Ad obſervationem & defenſionem Libertatum, Conſuetudinum & Legum Paternarum ex debito præſtiti Sacramenti adſtringimur, quæ manutenebimus toto poſſe, totiſque viribus cum Dei Auxilio defendemus, nec etiam permittimus, aut aliquatenùs permittemus, ſicut nec poſſumus nec debemus, præmiſſa tam inſolita, indebita, præjudicialia & aliàs inaudita Dominum noſtrum Regem, [etiamſi vellet] facere ſeu quomodolibet attemptare, *præcipuè*

cipuè cùm præmiſſa cederent in exhæredationem juris Coronæ Regis Angliæ & Regiæ Dignitatis, ac ſubverſionem Status Ejuſdem Regni notoriam, necnon in præjudicium Libertatum, Conſuetudinum ac Legum Paternarum. Sealed by *One hundred and four Earls and Barons*, and in the Name of all the *Commonalty* of England. *V. Co. 2d. Inſt. pag.* 196. *and Fox his Book of Martyrs, Vol.* 1. *pag.* 387, 388, 389. By which it appears that the *King* could not *legally*, if he would, have given way to the *Pope's* determining the Controverſie about the Succeſſion in *Scotland*; ſince it belonged to himſelf *in jure Coronæ* as *directus Dominus Scotiæ.*

The Second Authority ſhall be that of *Rott.* Parl. 40 *Edw.* 3. nu. 7, 8. Where it was reſolved "*in full Parliament* by the *Prælates*, the *Earls* and the *Commons*, that neither the *King*, nor "any other could put the *Realm*

" nor *People* thereof into ſuch ſub-
" jection, [*ſans Aſſent d'Eux.*]
The Occaſion was King *John's* having ſurrendred his *Crown* to the *Pope*, and received it back again, to hold it as a Feudatary to the Papal See. And it appeared to them by many Evidences, that he had done ſo [*ſans lour Aſſent*] and contrary to his *Coronation Oath.* Mr. *Selden*, in his *diſſertatio ad Fletam*, *pag.* 552, 553. gives this Account of it. *Cum ſub Edwardo Tertio in Ordinum conſeſſu quæſtio habebatur de donatione illâ decantatiſſimâ Johannis Regis factâ Innocentio Papæ Tertio & Succeſſoribus Ejus, unde Urbanus Quintus tum annuum inde natum mille Marcarum, Angliæ ſimul & Hiberniæ nomine, Cenſum ſibi tunc ſolvi petebat, tum Regnum utrumque jure tantum beneficiario, atque ut ſedis Romanæ Feudum, à Regibus noſtris contendebat poſſideri; Ordines Univerſi, idque tam Generis Hieratici* (*quod mirere*) *quàm Proceres, ſeu*

Senatus

Senatus Populuſque in Comitiis illis, ſolemni initâ deliberatione, reſponderunt unanimes, irritam planè fuiſſe Johannis Donationem illam, utpote tam [ſine Ordinum Aſſenſu,] *quàm* [juramento ejus Inaugurali Adverſam.] " Et outre ceo (*ſic loquuntur Archiva*) " Les Ducs, Counts, " Barons, Grands & Comens ac- " corderent & Granterent, que en " cas que le Pape ſe afforceroit ou " rien attempteroit per proces, ou " en autre manner de faire de con- " ſtreindre le Roy, ou ſes ſubgitts " de perfaire ceo que eſt dit, qu'il " voit claimer cell partie, qu'ils " reſiſterent & Contreeſterent ove " tout lour Puiſſance. And with this agreed the Scottiſh Laws; *Et idem Rex Scotiæ dicit, ſicut prius, quod de aliquo Regnum ſuum contingente, non eſt Auſus nec Poteſt hic Reſpondere, Inconſultis probis hominibus Regni ſui. Plac. Parl. Inter. Johann. Reg. Scotiæ & Magdulph.* 21 *Edw.* 1. *pag.* 157.

He mentions (pag. 155.) *the Claims, which our Antient Kings made to Inveſtitures, and the Interpoſing their Authority, even in Allowing or Diſallowing the Perſons of Biſhops.* And it is very true, that till the beginning of King *Henry the Firſt* his Reign, they not only Claim'd, but actually did *Inveſt* Biſhops and Arch-biſhops *per Traditionem Annuli & Baculi:* And ſubjects in antient time, that *Founded Churches*, had the ſame Right of *Collation or Inveſtiture*, whereby the Incumbents received full Poſſeſſion, without Aid of the *Biſhop* or other *Churchman. Vid.* Selden's *Hiſtory of Tythes, cap. 6. ſect.* 3. And the *Kings* Right of *Inveſting Biſhops*, becauſe all *Biſhopricks* were *Royal Foundations*, was ſuch, as could not be parted with, but by *Act of Parliament.* For that the *Kings* were bound by their *Coronation-Oaths* (as hath been ſaid) *Jura Regni*

ſer-

ſervare illibata, nec aliquid, quod Diadema tangit Regni, abſque Prælatorum & Procerum requiſito Concilio facere. And therefore King *Henry the Firſt* in a Letter to *Pope Paſchal* upon this Subject of *Inveſtitures*, which the *Pope* then contended hard to gain from him, tells him plainly; *Si Ego (quod abſit) in tantâ me dejectione ponerem*, (*viz.* as to forego them) *Optimates mei, imò totius Angliæ Populus id nullo modo pateretur. Collect. p.*999. And therefore, when afterwards they were given up, it was done in *Parliament*; *Poſtmodum Kalend. Auguſti Clero & Populo ad Concilium Londoniæ Congregato, Adſtantibus Archiepiſcopis, Epiſcopis, cæterâque multitudine maximâ Procerum & Magnatum, ſtatuit Rex & conceſſit, ut ab eo tempore in anteà nullus electus per dationem Baculi Paſtoralis vel Annuli de Epiſcopatu vel Abbathiâ Inveſtiretur per Regem vel quamcunque aliam perſonam ſæcularem Collect. pag.* 1000.

And

And for *the King's interposing his Authority in Allowing or Disallowing the Persons of Bishops*; Before the Reign of King *William the First*, *Nulla erat Electio Prelatorum merè Libera & Canonica, sed omnes Dignitates tam Episcoporum, quàm Abbatum Regis Curia pro suâ Complacentia conferebat. Ingulphus*; *pag.* 509. And in King *William the Conqueror's* time, *Lanfrank* was chosen *Archbishop* of *Canterbury*, *Consensu & Consilio omnium Baronum suorum, omniumque Episcoporum & Abbatum totiusque populi Angliæ: Brev. Relat. de Will. Com. Normann. Auth. Anonym. Eligentibus eum senioribus ejusdem Ecclesiæ cum Episcopis & Principibus, Clero & Populo Angliæ, in Curiâ Regis in Assumptione sanctæ Mariæ: Gervas. Dorob. Col. pag.* 1653. In the Reign of his Successor King *William Rufus*, *Anselm* was chosen in like manner, *Vid. Eadmer. lib.* 1. And in King *Henry*

the

the First's time, *Radulphus*, who ſucceeded *Anſelm*, was choſen Archbiſhop at *Windſor*, whither *Rex inſtinctu Dei permotus Epiſcopos & Principes Angliæ in unum fecit venire, eorum Conſilium in Conſtituendo Archiepiſcopo Cantuariensi valens habere. Vid. Eadmer Lib. 5. cap.* 109, 110. Many Examples occur of other *Biſhops* and *Abbots* elected, either in *Parliaments*, or, which is all one, in Eccleſiaſtical Aſſemblies, conſiſting of the ſame Members, that Parliaments of thoſe times were compoſed of, betwixt the Conqueſt and King *John's* time. *Vid. Spelm. Councils*, *Tome* 2. *pag.* 39. *ibid. pag.* 119. But *Elections* were not uniform in thoſe days: The *Clergy* ſtrugled hard to gain them wholly to themſelves: And the Kingdom was ſometimes diſquieted about the matter, eſpecially in King *John's* time. Sometimes *Elections* were by the *Chapter*, ſometimes by the *Clergy and People*

of

of the Dioceſs, ſometimes in *Great Councils*. King *Henry the Second* endeavoured to have ſettled them by the Laws of *Clarendon*, *cap.* 12. *Vid. Collect. pag.* 1387, 1388. But the *Pope* broke in upon them, by forcing him to ſwear, when he was abſolv'd for *Becket's* Death, *Quod Conſuetudines, quæ ſuis temporibus contrà Libertatem Eccleſiæ fuerant introductæ, revocarentur in irritum: Radulph. de Dicето; Coll. pag.* 560. This altered no *Right*; but it gave the *Clergy* a colour to innovate upon him. But in King *John's* time the pretended Right of *Election* was yielded up to the *Clergy* by a Law. *Conſenſu Baronum.* Only a *Congé d'eſlire* was to iſſue, and *Electi poſt Electionem celebratam debebant Domino Regi præſentari, & poſt confirmationem, ante adminiſtrationem in ſpiritualibus vel temporalibus faciendam, ei Juramentum fidelitatis præſtare. Matth. Pariſ. pag.* 635. And ſo the Right continued till King *Henry*

the

the Eighth's Time, that it was altered by *Parliament*. Hence it appears that Our *Kings* had no *Perſonal* Inherent Right and Prerogative in theſe *Elections*, ſince all were of Old to be made in *Parliament*, and ſince the ſeveral *Legal Alterations*, that have been made therein, have been made in and by *Parliaments*.

Nor is it to be wondred, that whereas Subjects might *Collate* in thoſe Days Churches of their own *Foundation* to any Clerk in Orders, and give him the *Inveſtiture*, even without ſo much as a Preſentation to the Biſhop; yet our Antient *Kings Collated Biſhopricks*, no otherwiſe than in *Curia ſuâ*: For though *Biſhopricks* were *Royal Foundations*, yet they were *Founded* by *Acts of Parliament*, as will appear by and by: And one Great Reaſon, why our *Kings* at leaſt in thoſe Days, could not Erect *Biſhopricks* and endow them other-

otherwiſe, was becauſe they could not in thoſe Days Alien their *Crown Lands* without the *Aſſent* of their *Barons*. *Non poterat Rex diſtrahere Patrimonium Regni.*

And though King *John* told *Pandulphus* the *Legate*, *Omnes Prædeceſſores mei contulerunt Archiepiſcopatus, Epiſcopatus & Abbathias in thalamis ſuis: Monaſt. Burton. pag.* 264. That muſt be underſtood to have been done ſince the *Norman Conqueſt* only, though the contrary was frequently practiſed even in thoſe Days, and eſpecially ſince the *Conſtitutions of Clarendon*: For the Inſtance that he there gives of *Wolſtan*'s being made Biſhop of *Worceſter* in King *Edward* the *Confeſſor* his Time, was far from a Collation *in Thalamo*; if we believe himſelf, when he reſigned his Paſtoral Staff at the *Confeſſor's* Tomb: There concurred *Electio, Plebis Petitio, Voluntas Epiſcoporum & Gratia Procerum*

eorum (a full Parliament) as well as the *Authoritas & Voluntas* of the *King* himſelf. *Matth. Paris. pag.* 20, 21.

As for our Kings *ſeizing the Temporalties of Biſhops into their Hands, and ſo ſuſpending them à* beneficio ; (which the *Doctor* ſpeaks of, *pag.* 155.) *of which* (he ſays) *many Inſtances may be found in Mr.* Prynn's *Hiſtorical Collections* : I ſuppoſe he would not be underſtood, as if our *Kings* either might, or uſed to ſeize them *ad Libitum*, but by *legal proceſs*, and for ſome *contempt*, for which *by the Law* they were liable to Seizure. They were held of the *King* by *Barony*; and though the *Biſhops* pretended to an *Exemption*, as to their *Perſons*, from the *Laws* of the Land, yet their *Temporalties*, which were held of the *King*, and for which they did him *Fealty*, were no-wiſe *Exempted*; but that if they ſhould com-

mit Offences, for which the *King* might by Law *capere se ad Barbias suas*, they, as well as the *Laity*, that held by the same Tenure, were equally liable to the Course and Rigour of the Law. What use this is of to the *Doctor*, for the setting up some *Notional Supremacy* lodged in the *King Personally*, I know not as yet. Irregularities and Oppressions might well be used upon such occasions, and Seizures made, when there was no cause, but the *Statute of the fourteenth of Edward the Third, cap.* 6. aforementioned, was provided to prevent such Mischiefs for the future.

But the *Doctor* was very ill advised in quoting (*pag.* 155.) to clear the point, the Statutes of *Provisions*. For those *Statutes*, which every body knows, and the *Doctor* will not deny, to be only *new* Bullwarks to secure *Old* Rights, were yet such, as the *King* could

could never *dispense* with: But when the Circumstances of his Affairs were such, that to gratify the Pope, and tye him to his Interest, he found it convenient to have some Relaxation made of those Laws, then were *Parliaments* called, and at their first meeting, one cause of their Convention declared to be, to provide remedy touching the Statutes of *Provisions*, for eschewing debate between the *Pope* and the *King*, and his Realms. And then we find leave given to the *King*, from time to time to *dispense* with those Laws, and that but *for a time*, and this declar'd to be *a Novelty*. *Vid. Cotton's Abridgment*, *pag.* 341. 346. *Annis* 15. & 16. *Rich.* 2.

And the Complaints of the English Nation in *Matth. Paris* against the *Pope's Provisions* were grounded upon this,

V I Z.

That *Patroni Eccleſiarum, ad eas, cum Vacaverint, Clericos idoneos præſentare non poterant, ſed conferebantur Eccleſiæ Romanis: qui penitus Idioma Regni ignorabant, & pecuniam extra Regnum aſportabant.* Theſe Oppreſſions fell chiefly upon the *Clergy*, as appears by moſt of the Laws againſt *Proviſions*, of which hereafter; for the *Pope* aſſum'd a greater Power over them and Churches, of which they were *Patrons*, then he could pretend to over the *Laity*; and they ſometimes comply'd with his *Proviſions*, and ſubmitted to collate *Italians* and *Foreigners*, as at other times they did to heavy *Exactions*, inſomuch that in the year 1240. *miſit Dominus Papa præcepta ſua Domino Cantuarienſi Archiepiſcopo Edmundo, & Sariſberienſi, & Lincolnienſi Epiſcopis, ut trecentis Romanis in primis beneficiis*

neficiis Vacantibus provideret; ſcientes ſe ſuſpenſos à beneficiorum Collatione, donec tot competenter provideretur. Matth. Paris, pag. 532. And it appears by the ſame Author, that theſe, and more were provided of Eccleſiaſtical Benefices in *England*: *Præbendas, Eccleſias & varios redditus opimos pluſquam trecentos ad ſuam vel Papæ contulerat* (*legatus Otto*) *voluntatem: id. p.* 549. But many grievous Complaints and Petitions in *Parliaments*, and in Letters to the *Pope*, occur in *Mr. Prynne's Hiſtorical Collections*, and in the *Parliament Rolls* againſt theſe *Proviſions*, as intolerable Grievances, and contrary to all Law and Reaſon. If at ſome times they were comply'd with, upon condition, that the Perſons recommended by the *Pope*, *were of good condition, and worthy of Promotion*, how does that relate to its *being in the King's power even to admit the perſons to the Dignity and Office*, as the *Doctor*

ſter ignorantly and childiſhly aſſerts? But his concluſion,

V I Z.

That the Exerciſe of their Government, was according to the King's Laws, I do not Quarrel with him about, for it was, or ought to have been ſo: But not according to the *King's Pleaſure.*

Nor would any unbyaſſed Man in Reading King *Alfred's* Laws, have readily made ſuch an Inference, as the *Doctor* does (*pag.* 155, 156,) telling us out of *L. I. Alvredi*, that King *Alfred* reſerved to himſelf the liberty even of *Diſpenſing* with the *Marriage* of *Nuns*: Which he would repreſent, as a thing prohibited by the *Canons* only, and that the *King* reſerved to himſelf a Power of *Diſpenſing* with it, though without his Eſpecial *Diſpenſation* he ſuffered the *Canon* to take place: Now the

the *Marriage of Nuns* was really prohibited by a Law of the State, by an *Act of Parliament* of that Age; For *Brompton*, giving us an Account of King *Alfred*'s Laws, ſays thus; *Ego Alfredus Weſt-Saxonum Rex oſtendi hæc* [omnibus ſapientibus meis,] *& dixerunt; Placet ea Cuſtodire.* And many Temporal Laws are amongſt them, all Enacted by the ſame Authority. And the ſame *Law* or *Canon* that prohibits *Nuns* from *Marrying*, gives the *King*, and not only him, but the *Biſhop* of the Dioceſs leave to *Diſpenſe*; ſo that the *Doctor* might as well have argu'd for the *Biſhops* as the *Kings* reſerving a Power to himſelf of *Diſpenſing*: The Words are, *Si quis Sanctimonialem ab Eccleſia abduxerit, ſine Licentia* Regis *vel* Epiſcopi, *&c.*

Then he ſays, That *our Kings Preſided ſometimes in Councils of the Clergy of their Kingdom, though the*

Pope's Legates were present, and Quotes *Spelman's Councils*, *pag.* 292, 293. Out of which Book it will not be amiss to give an Account of that Assembly, which the *Doctor* in this place calls *a Council of the Clergy.*

Anno Gratiæ 787, *Concilium Calchythense Legatinum & Pananglicum a Gregorio Ostiensi & Theophylacto Tudentino Episcopis, & Legatis Hadriani Papæ Calchythæ celebratum est. In quo decernitur de fide primitùs susceptâ retinendâ, aliisque ad Ecclesiæ regimen pertinentibus: Et de Conferendâ parte Archiepiscopatûs Cantuariæ ad Ecclesiam Litchfeldensem, jam in Archiepiscopatum promovendam. Habebatur in duabus Sessionibus* (says Sir *Henry Spelman*, *rectiùs fortè concilia dicendis*) *quarum prima fuit in regno Northanhymbrorum, coram Alfwoldo illic Rege* [& Magnatibus suis:] *Præsidente & Legato Gregorio Ostiensi Episcopo. Secunda Sessio in Regno Merciorum*

rum fuit, coram Offâ Rege ibidem [& ſuis Magnatibus:] *Præſidente etiam in eâdem Gregorio ipſo Oſtienſi.* So that here appears the *Doctor's First* miſtake, in ſaying that the *Kings* preſided, though the *Legates* were preſent. I confeſs our *Kings* frequently did preſide in *Eccleſiaſtical Aſſemblies*; nor was the Grandeur of *Popes* arrived in thoſe Days to ſuch an Extravagant pitch, as to Uſurp Precedency before *Kings* and *Emperors*. But I obſerve this, to ſhew the *Doctor's* careleſneſs in his Quotations, not to argue any Inferiority of the *Kings* Perſons, by reaſon of their not *preſiding*, when they were Preſent. For we find Inſtances of *Archbiſhops* of *Canterbury* preſiding, though the *Kings* were Preſent. The *Doctor's Second* miſtake is, in calling this an Aſſembly of the *Clergy*: For though this Council was Aſſembled for *Eccleſiaſtical Matters*, nor do we find any Temporal Laws made, or Temporal Affairs tranſacted in it,

(ſaving,

(saving, that in the *Twelfth Chapter* it is decreed what sort of Persons shall be chosen to be *Kings*, and by whom) yet were all Persons present, that in those Days constituted the General Legislative Assemblies of the Nation, which in latter Ages we have Christned by the Name of *Parliaments*. And this appears by the Letter, which one of the Legates wrote to the *Pope*, giving him an account of the Success of their *Mission*. *Pervenimus ad aulam Offæ Regis Merciorum; at ille cum ingenti gaudio ob Reverentiam Beati Petri & vestri Apostolatûs, honore suscepit tam nos, quàm sacros apices, à summâ sede delatos. Tunc convenerunt in unum Concilium Offa Rex Merciorum & Chinulphus Rex West-Saxonum, cui etiàm tradidimus vestra Syngrammata Sancta: Ac illi continuò promiserunt se de his vitiis corrigendos. Tunc* [unito concilio cum prædictis Regibus, Pontificibus, Senioribus terræ,] *perpendentes quod angulus*

angulus ille longè latèque protenditur, permiſimus Theophylactum Venerabilem Epiſcopum, Regem Merciorum & Britanniæ partes adire. Ego autem, aſſumpto mecum Adjutore, quem filius veſter Excellentiſſimus Rex Carolus ob reverentiam Veſtri Apoſtolatûs nobiſcum miſit, Virum probatæ fidei Wighodum, Abbatem Presbyterum, perrexi in regionem Northanhymbrorum, ad Oſwaldum Regem, & Archiepiſcopum Sanctæ Eccleſiæ Eboracæ Civitatis Eanbaldum. Sed quia præfatus Rex longè in Borealibus commorabatur, miſit jam dictus Archiepiſcopus miſſos ſuos ad Regem, qui continuò omni gaudio Statuit diem concilii: Ad quem Convenerunt [Omnes Principes Regionis,] *tam Eccleſiaſtici quàm Sæculares.* And a little after; *Qui omni Humilitatis Subjectione, & clarâ voluntate, tam admonitionem Veſtram, quàm parvitatem noſtram amplexantes, ſpoſponderunt ſe in omnibus obedire.* Then follow the Canons themſelves;

Note here the manner of receiving Foreign Canons in thoſe days.

ſelves : And afterwards ; theſe Words ;

VIZ.

Hæc decreta, Beatiſſime Pater Adriane, in Concilio publico, coram Rege Ælfwaldo & Archiepiſcopo Eanbaldo, [& omnibus Epiſcopis & Abbatibus regionis, ſeu Senatoribus & Ducibus & Populo terræ] *propoſuimus, & illi, &c. ſe in omnibus cuſtodire decreverunt, & ſigno crucis in vice veſtrâ in manu noſtrâ confirmaverunt.* Then follow the Witneſſes Names, of whom part are *Secular*, part *Eccleſiaſtical* Perſons. And afterwards ; *His peractis perreximus, Aſſumptis nobiſcum Viris illuſtribus, Legatis Regis & Archiepiſcopi, &c. qui unà nobiſcum pergentes, & ipſa decreta ſecum deferentes in Concilium Mercierum, ubi Glorioſus Rex Offa* [cum Senatoribus terræ] *unà cum Archiepiſcopo Janbrichto ſanctæ Eccleſiæ Dorovernenſis & cæteris Epiſcopis*

copiis regionum convenerat, & in Conſpectu Concilii Clarâ voce ſingula Capitula perlecta ſunt, & tam Latinè quàm Teutonicè, quo [omnes] *intelligere poſſent, dilucidè reſgrata, qui* [omnes] *conſonâ voce, alacri animo, gratias referentes, promiſerunt ſe in omnibus hæc Statuta cuſtodire.* In this Convention the *Canons* of the ſix firſt *General Councils* were received: And ſeveral Conſtitutions made for the Government of the *Engliſh Church*. All which were Aſſented to by the *Clergy* and the *Laity* of theſe two Kingdoms of the *Heptarchy*: And by Vertue of that *Aſſent*, became incorporated into the Municipal *Laws* of thoſe Kingdoms. So that though this, and many other ſuch *Councils* as this was, ſhew abundantly the *King of England's Supremacy* in *Eccleſiaſtical* Affairs, in oppoſition to a Foreign Power, yet no Argument can be drawn from hence to prove any other or greater power in

Ec-

Eccleſiaſtical Matters to be lodged in the *King*, than he has in *Temporals*: The *Supreme* Power in both being in the *King*, in conjunction with his *Great Council* or *Parliament*, but not in him, ſeparate and apart from *them*.

Another Example produced by the *Doctor*, of our *Kings* having preſided in a Council of the *Clergy*, though the *Pope's Legates* were preſent, is out of Sir *Henry Spelman's Counc. pag.* 189. But in this he has as bad luck, as in the former; for, as in the former the *Kings* did not *preſide*, but one of the *Legates*, ſo in this the *King* indeed *preſided*, but no *Legate* appears by the Book to have been preſent. And the Acts of the Council begin thus;

VIZ.

In Nomine Domini Dei Noſtri & Salvatoris Jeſu Chriſti Congregatum eſt

est Magnum Concilium in loco qui vocatur Becancelde, Præsidente in eodem Concilio Withredo Clementissimo Rege Cantuariorum, nec non Bertualdo Reverendissimo Archiepiscopo Britanniæ, simulque Tobiâ Episcopo Roffensis Ecclesiæ, cæterisq; Abbatibus, Abbatissis, Presbyteris, Diaconibus, Ducibus, Satrapis in unum glomeratis, paritèr tractantes, anxiè examinantes de statu Ecclesiarum Dei, &c. Here the *King* presides in a *General Council* of his own People, or in a *Parliament* assembled for Matters concerning the State and Government of the *Church.* And what use the *Doctor* can make of all this, I know not.

The Charter of King *William the Conqueror*, whereby he severed the *Ecclesiastical* Courts from the *Temporal*, and which the *Doctor* would have us believe, was an Act of the *King's Personal Authority*

rity in *Eccleſiaſtical* Affairs, was *a Parliamentary Charter*, or an *Act of Parliament. Willielmus Dei gratiâ, &c. Sciatis, &c. quod leges Epiſcopales, quæ non benè, nec ſecundum ſanctorum Canonum præcepta, uſque ad mea tempora in Regno Anglorum fuerunt, Communi Conſilio Archiepiſcoporum meorum, & cæterorum Epiſcoporum & Abbatum & omnium Procerum Regni mei, emendandas Judicavi. Propterea mando & præcipio, ut nullus Epiſcopus vel Archidiaconus de legibus Epiſcopalibus amplius in Hundret placita teneat, &c.* This *Mr. Selden* underſtood to be an *Act of Parliament*, for having given an account of his *Diaploma* to *Battle-Abbey*, and recited it at length in his *Notes & Specilegium ad Eadmerum*; *p.* 165, 166. which was granted *Aſſenſu Lanfranci Archiepiſcopi Cantuarienſis, & Stigandi Epiſcopi Ciceſtrenſis & Concilio etiam Epiſcoporum & Baronum meorum*: ſays

ſays he, *id genus etiam eſt ſancitum ejus, quo Sacrum à Civili diſcriminavit Forum.* The ſame Author ſpeaking in another of his Works of King *William* the *Conquerour*'s bringing the Poſſeſſions of the *Church* under *Military Service*, of which, though *Roger Wendover* (out of whom *Matthew Paris* took the Relation) ſays, that *Epiſcopatus & Abbathias omnes, quæ Baronias tenebant in purâ & perpetuâ Eleemoſynâ, & eatenus ab omni ſervitute Seculari Libertatem habuerant, ſub ſervitute ſtatuit Militari, irrotulans ſingulos Epiſcopatus & Abbathias pro Voluntate ſuâ quot milites ſibi & ſucceſſoribus ſuis, hoſtilitatis tempore voluit à ſingulis exhiberi.* Yet (ſays Mr. *Selden*) *how it is likely he brought them to this kind of Tenure, may be conjectured by other circumſtances of the ſtories of the the ſame time. And obſerve eſpecially, That he held a Parliament the ſame Year; ſo that perhaps this Innovation of their Tenures was done by an* Act *of that* Parliament. *Seld. Titles of Honour*, p. 578. Which I mention only to ſhew, that things ſaid to have been done by the *Conquerour*, and eſpecially *Laws* and *Conſtitutions* mention'd to have been made by *Him*, muſt not preſently be

uppos'd to have proceeded from his *own, ſingle, perſonal Authority*, but to have been made *More Anglico, cum aſſenſu Ordinum Regni*, as has been even now obſerved out of Mr. *Selden*.

What follows in the *Doctor* (p. 156, 157) concerning the *King's Temporal Courts, being Judges, whether a Cauſe belonged to the Juriſdiction of the Temporal or Eccleſiaſtical Courts*, is very true: And ſo is the Account, that he gives of King *William* the *Firſt, his ſettling many particulars to belong to the Juriſdiction of the Eccleſiaſtical Judges, in a Council at* Illibon *in* Normandy, *Anno* 1080. But it is an inveterate Error of the *Doctor's*, to confound the *King's perſonal Authority* with his Authority in his *Courts*, and his Authority in, and with the *Aſſent* of his *Great Councils* or *Parliaments*. That Councel of *Illebon*, mention'd by the *Doctor*, is related by *Ordericus Vitalis* in this manner; *viz. Anno ab Incarnatione Domini* MLXXX, *Rex Gulielmus in feſto Pentecoſtes apud Illebonam reſedit, ibique Gulielmum Archiepiſcopum &* [omnes Epiſcopos & Abbates, Comiteſque cum aliis Proceribus Normanniæ] *ſimul adeſſe præcepit. Ut Rex juſſit, factum eſt. Igitur Octavo An-*

Anno Papatus Domini Gregorii Papæ ſeptimi Concilium apud Jullam ---- bonam celebratum eſt, & de ſtatu Eccleſiæ Dei, totinſque Regni, providentiâ Regis [cum Baronum ſuorum conſilio] *utiliter tractatum eſt.* And then follow the *Canons*, all being concerning matters *Eccleſiaſtical.* Now what uſe the *Doctor* makes of this *Paragraph*, I know not. For the Juriſdiction of the *King* in his *Courts*, (where the *Law* of the Land is the *Judges* rule) to reſtrain All *Inferiour Courts* within their proper bounds, no man denies: And the *King's Authority* to limit, erect and appoint *Conſilio Baronum ſuorum*, And *unà cum Epiſcopis, Comitibus & Proceribus Regni ſui*, what Cauſes ſhall belong to the cogniſance of *Eccleſiaſtical Judges*, and what not, no man, that is a *Proteſtant*, queſtions. How many *Acts of Parliament* in every Age might be reckon'd of this nature; *vid. Stat. de Circumſpecte agatis temp. Edwardi* 1. *Stat. de Articulis Cleri, tempore Edward.* 2. *& Statutum pro Clero, tempore Edw.* 3. and innumerable others.

Then the *Doctor* refers his Readers for farther ſatisfaction how far the *Kings* of *England* have exerciſed Juriſdiction in *Eccleſiaſtical matters*, to

Sir *Roger Twiſden*, pag. 108, 109, &c. who inſtanceth in *eighteen* particulars. I will not ſtand with the *Dr.* for the number, but referr him to Mr. *Prynn's ſecond Tome of his Chronological Vindication of the King's Supreme Eccleſiaſtical Juriſdiction*, out of the Introduction to which Volume he might have named *five and twenty*. But becauſe he has choſen to quote Sir *Roger Twiſden's eighteen*, let us examin thoſe Particulars, and Sir *Roger's* Authorities, upon which he grounds them, and it will preſently appear how far they make for his *Hypotheſis*.

1. The firſt is, *that they permitted none to be taken for Pope, but by the King's appointment.* For which he quotes *Eadmerus*, pag. 26. But of this matter having ſpoken already, I ſhall ſay no more of it in this place.

The Second is, *That none were to receive Letters from the Pope, without ſhewing them to the King, who cauſed all words prejudicial to him or his Crown, to be renounced.* For which he quotes *Eadmerus*, pag. 113. In whom are theſe words, in a Letter from Pope *Paſchal* to King *Henry* the Firſt, *viz. Sedis enim Apoſtolicæ Nuntii vel Literæ, præter juſ-*

ſum

ſum Regiæ Majeſtatis, nullam in poteſtate tuâ ſuſceptionem aut aditum promerentur. This was but the Law of *England*, not to be ſubject to any *Foreign* Power; aſſerted by a Law in King *William* the *Conquerour*'s time, and afterwards over and over in oppoſition to *Papal* Encroachments and Uſurpations; confirm'd by the Statutes of *Præmunire* and *Proviſors*, and effectually ſecured by the *Laws* made at and ſince the *Reformation*, and particularly by that Remarkable Statute of 14 *Henr.* 8. *cap.* 12. concerning Appeals. And that the King could not of himſelf let in a *Forein* Power upon his People, appears ſufficiently by what has been ſaid already. The two Paſſages quoted by Sir *Roger* out of *Thorn*, *Collect.* pag. 2151, 2152, and 2194, ſhew that two Perſons, to whom the *Pope* had conferr'd by *Proviſions*, the Monaſtery of St. *Auſtin* in *Canterbury*, were enforced, before their Admittance, to *renounce all ſuch words in their Bulls of Proviſion*, as were prejudicial to the *King* and his *Crown*; *i.e.* to the *Laws of the Realm*, in and over which the King was Supreme Magiſtrate and Governour. After which *renunciation* made, they did *fealty* to the *King*, and were

by the *Escheator* put into possession of their *Temporalties*. The *King* might by Law have oppos'd these *Provisions*, but the *Monks*, who had the Right of *Election*, being willing to receive the Persons so *collated*, and the *King* to admit them (as any Private *Patron* might admit a Clerk to be collated to a Church of his own Gift, by *Provision*) it was very reasonable that the *King* should require a *renunciation* of such Clauses in their *Bulls of Provision*, as interfer'd with the Jurisdiction, which the *Law* gave him over his *Spiritual Subjects*. And this appears by Sir *Roger Twisden*'s third quotation upon this Head, compar'd with an Act of Parliament in Queen *Mary*'s time.

The quotation is out of *Coke*'s 3 *Instit.* pag. 27. where the Form of the *Renunciation* is set down; *viz. I renounce all the words comprized in the Pope's Bull to me made of the Abby of*, &c. *the which be contrary or prejudicial to the King our Sovereign Lord, and to his Crown*, &c. A true and Genuine Explanation of which, take from an *Act* of a *Popish* Parliament, *viz.* 1 & 2 *Phil.* & *Mar. cap.* 8. *Be it Enacted by Authority of this present Parliament, That all Bulls,*

Bulls, Diſpenſations and Privileges obtained before the Twentieth Year of King Henry *the* Eighth, *or which ſhall hereafter be obtained of the See of* Rome, *not containing matter contrary or prejudicial to* [the Authority, Dignity, or Preheminence Royal or Imperial of the Realm, or to the *Laws* of the Realm,] *now being in force, may be put in execution*, &c. So that ſuch *Bulls*, as were not contrary to the known *Laws* of the Realm, were allowed to be valid, ſo long as the *Pope* was acknowledged to be the *Head of the Engliſh Church*: But ſuch *Bulls*, or *clauſes in Bulls*, as were contrary to the *Laws*, were to be *renounced*, as Prejudicial to our Sovereign Lord the *King* and his *Crown*; *i. e.* as this Law of *Phil.* and *Mary* explains it; *to the Preheminence Imperial of the Realm, and the Laws of the ſame.*

Sir *Roger*'s third Particular is, That *Our Kings permitted No Councils, but by their liking, to aſſemble, which gained the name of Convocations; as that always had been and ought to be aſſembled by the King's Writ.* For this Sir *Roger* quotes *Eadmer. pag.* 24, and the ſtatute of 25 *Henry the* 8. *c.* 19. Upon this Head I have no Controverſie with the *Doctor*

nor Sir *Roger*, I only aſſert, that ſuch things as are the proper Buſineſs of *Convocations*, cannot be tranſacted by the *King alone* without them.

His fourth particular is, That *Our Kings cauſed ſome to ſit in them* (*ſc.* in his Eccleſiaſtical Councils) *to ſuperviſe their Actions and prohibit them, on the behalf of the King and Kingdom*, ne quid ibi contra Regiam Coronam aut dignitatem ſtatuere attentarent. Here the Reader is to obſerve, that the Authority quoted for this, is in *Anno Dom.* 1237. which was about the twentieth year of King *Henry the Third*, before which time the *Clergy* had turn'd the *King* and the *Laity* out of their *Synods*. And therefore it ſtood the *King* in ſtead to *prohibit* them, who were but a ſmall number of his Subjects, and ſcarce *half-Subjects*, from attempting any thing to the prejudice of the Rights of his *Crown*, or the *Liberties* of his People, and the *Laws* of the Realm; which they had already made too great inrodes upon. As no ſuch *Prohibitions* as theſe, can be produc'd in former times, ſo they were altogether uſeleſs and unneceſſary, when the *Kings* themſelves and *all* ſuch of their Subjects as were

ad-

admitted into *Parliaments*, ſat and had Votes in *Eccleſiaſtical Synods*: as is undeniably evident by almoſt all the Ancient *Councils* collected by Sir *Henry Spelman*, till within the Reign of King *Steven*; Who owing his Crown to the *Clergy*, was fain to ſuffer this and other Uſurpations, to ſecure his crack'd Title. But after the *Clergy* took upon them to meet in *Convocations*, neither aſſembled by the *Kings Writ*, nor conſiſting, as the *Ancient* Synods had done, of the *King* and all the *Eſtates of the Realm*, *Prohibitions* to them are frequent, not to attempt any thing againſt the *Law of the Land*. *Vid.* Patt. 8. Reg. *Johan. nu.* 1. *Rex Archiepiſcopis, Epiſcopis, Abbatibus, Archidiaconis, & omni Clero apud ſanctum Albanum ad Concilium convocato, ſalutem. Conquerente Univerſitate Militum & Baronum & aliorum fidelium noſtrorum, audivimus quod non ſolum in laicorum grave præjudicium, ſed etiam in totius Regni noſtri intolerabile diſpendium, ſuper Romeſcot præter conſuetudinem ſolvendo, & aliis perplurimis inconſuetis exactionibus Authoritate ſummi pontificis Concilium inire & Concilium celebrare decreviſtis: Nos vero &c. Vobis preciſe mandamus & expreſſe prohibemus, ne*

ſuper

ſuper prædictis vel aliquibus aliis Concilium aliquod in Authoritate aliquâ, in fide quæ nobis tenemini, teneatis, vel contra Regni noſtri Conſuetudinem aliquid novi ſtatuatis, & à celebratione hujuſmodi Concilii ſuperſedeatis, quouſque cum Univerſitate noſtra ſuper hoc Colloquium habuerimus. This Writ appears to have been granted at the Complaint of the whole Parliament, and Commands the *Clergy* not to proceed in their Exactions, nor any other buſineſs *contra conſuetudinem Regni*, till the *King* had ſpoken with his *Parliament* about the matter. But I lay no ſtreſs at all upon the *Parliament*'s being here a party. I produce this Writ only to confirm Sir *Roger*'s fourth particular of the *King*s *prohibiting* the *Clergy* to attempt any thing againſt the Rights of his *Crown* or the *Law* of the Land. It is a known Rule, that whatever is forbidden by *Law*, the *King* may forbid by his *Proclamation*; and that whenſoever any Court aſſumes an Authority, not warranted by *Law*, the *King* may *prohibite* them by his *Writ*. What more natural, then for the *ſupreme Magiſtrate*, to whom the *Law* has committed the *Execution* of it ſelf, to *prohibite* all things that are contrary to *Law*?

As

As here we ſee the *King*, at the complaint of the *Univerſitas*, prohibits the *Clergy* from attempting any thing contrary to the *Conſuetudo Regni*, ſo in King *Henry the Eighth's time* there appears a prohibition to the *King* himſelf and the *Clergy*, not to do any thing *contrariant or repugnant to the King's prerogative* Royal, *or the Cuſtoms, Laws and Statutes of the* Realm. The Statute of 25 *Hen.* 8. *cap.* 19. (which all men agree to be but *declarative* of the *Common Law*) enacts that *No Canons, Conſtitutions or Ordinances of the Clergy, ſhall be* [*made*] *or put in Execution within this* Realm *by Authority of the Convocation of the Clergy, which ſhall be contrariant or repugnant to the Kings prerogative* Royal, *or the Cuſtoms, Laws, or* Statutes *of the* Realm. This *Act* had before provided, that the *Clergy* ſhould not *make, promulge or execute any Canons, Conſtitutions or Ordinances in their Convocations without the Kings Licence and Aſſent*, under the Penalty of a *Premunire*; ſo that without the *Kings Aſſent* their *Canons* would be Nullities, and themſelves under a *premunire* for *making* or *Executing* them. And therefore when the *Act* provides in an after-

clauſe,

clauſe, that they ſhall [*make*] no *Canons, &c. contrary to the Kings prerogative, or the Laws of the Realm*, this is a *prohibition* to the *King and them* not to make any ſuch *Canons, Conſtitutions* or *Ordinances*, as are contrary to *Law*.

Sir *Roger*'s fifth particular is, That *our Kings ſuffered no ſynodical decree to be of force, but by their Allowance and Confirmation*. For which he quotes *Florentius Wigornenſis*, *Anno* 1127. Where 'tis ſaid, *Rex auditis Concilii Geſtis, conſenſum præbuit, & authoritate Regia & poteſtate conceſſit & confirmavit ſtatuta Concilii à Gulielmo Cantuarienſi Archiepiſcopo & ſanctæ Romanæ Eccleſiæ legato apud Weſtmonaſterium celebrati*. Now that *Council* conſiſted not of the *Clergy* only, but as *Eccleſiaſtical* Synods did in thoſe days, of the *Clergy* and *Laity*; *Confluxerunt quoque illic magnæ multitudines Clericorum & Laicorum, tam divitum quam mediocrium, & factus eſt conventus grandis & ineſtimabilis. ibidem*. And this we have heard before out of *Malmesbury* was neceſſary, *quatenus quicquid ejuſmodi Concilii Authoritate decerneretur, utriuſque Ordinis curâ & ſollicitudine ratum ſervaretur*. Now, that the Acts of ſuch Synods were

were of no force within the Realm without the *Kings Aſſent*, I agree: as his *Aſſent* is neceſſary to make an *Act of Parliament* a binding *Law* in *Temporals*, ſo his *Aſſent* is, and till the *Clergy* had turn'd him out of their *Synods*, always was neceſſary and Eſſential to an *Eccleſiaſtical* Law. But what inference can be drawn from hence to prove any *perſonal Supremacy in the King*, ſeparate and diſtinct from the *Aſſent* of his People in their *Synods* and *Councils*, I do not apprehend.

But one Obſervation I cannot omit upon this Council, compar'd with that other held *Anno Dom.* 1175. *& Ann.* 21. *Hen.* 2. For whereas in the former the *Laity* were preſent, as well as the *Clergy*, we find the *King* gave his *Royal Aſſent* to their *Canons*, and ſo they became *Eccleſiaſtical* Laws, binding to the whole Nation; In the latter the Laity were not preſent, by any account that I can find of it, and therefore to make their *Canons* general Laws the Kings Aſſent would not have been ſufficient, nor was it *ſingly* had; for *Gervaſ. Dorob. Anno Dom.* 1175. *pag.* 1429. Collect. tells us *in hoc Concilio ad Emendationem Anglicanæ Eccleſiæ aſſenſu Domini*

ni Regis *& primorum* Regni *hæc ſubſcripta promulgata ſunt Capitula.*

And that the *Clergy* in thoſe days, when they took upon them to hold Synods apart from the Laity, did not imagine that the King alone could give their *Canons* any Validity in Law, where they entrench'd upon or interfer'd with the Laws of the Land, will appear by obſerving, that when in King *Henry the Third*'s Time the *Clergy* in oppoſition to the *Gravamina Laicorum*, had made many proviſional Articles for the enlarging their own Juriſdiction, *pro quibus Epiſcopi Angliæ ſuerant pugnaturi*, *Mathew Paris* ſays thus of them; *viz.* Formati *ſunt* Articuli *circiter quinquaginta, quos prælati in ſcripta redegerunt, ut apto tempore coram* Rege *& magnatibus & prælatis lecti, effectum debitum ſortirentur. Additamenta ad Math. Paris. pag.* 199, *&c.* ſo that it was the *magnates & prælati*, as well as the King, and not the King without *them*, that could give life to them.

Sir Roger's ſixth particular is, That *our Kings permitted no Biſhops to Excommunicate or inflict any Eccleſiaſtical Cenſure on any Baron or Officer*, niſi præcepto ſuo; concerning which I have ſpoken already. The

The ſeventh is, That *they cauſed the Biſhops to appear in their Courts, to give an Account why they Excommunicated the Subject*. This makes nothing for any *perſonal Authority* in the King. Whatever he does in his *Courts*, he does by his Judges, who have the Law of the Realm for their guide and Rule. And ought to keep all inferiour *Courts* within their Bounds; and therefore might and do yet every day grant Prohibitions, when the *Biſhops* and their Officials proceed to *Excommunicate*, where the Law does not allow that Cenſure to be apply'd. And if the Writ of Prohibition be not obey'd, but that the *Biſhop* or other *Eccleſiaſtical Judge* proceeds notwithſtanding, an Attachment is the next proceſs. *Vid. Fitz. Nat. Br. tit. prohibition.* For Excommunication, whatever pretence of Divine Right the Clergy may have for their Juriſdiction, was always regulated by the Laws of the Realm, but never by the Kings Arbitrary Will and Pleaſure.

The Eighth is, *That they cauſed ſuch as were impriſoned, after forty days ſtanding Excommunicate, to be free'd by Writ, without the aſſent of the prelate or ſatis-*

ſatisfaction giving ; the King and his Judges communicating with them, tam in Divinis, quam profanis, *and commanding none to ſhun them, though by the ordinary denounced Excommunicate.* Now the ground of this is no other, then the Writ *de cautione admittenda*, by which the Biſhops are commanded, *quod accepta ab A. B.* (the Perſon Excommunicate) *cautione, ipſum à priſona, quâ occaſione prædict. detinetur, deliberari mandent ; alioqui quod noſtrum eſt in hac parte exequemur.* To which *Writ* if the *Biſhop* did not yield Obedience, then a *Writ* went to the Sheriff to deliver the Priſoner, if the Biſhop ſhould perſiſt in his refuſal to accept Caution. *v. Regiſt. fol. 66. a. & Fitz. Nat. Brev. Fol. 63.* Now theſe *Writs* in the Regiſter were made in Parliament, as *Bracton* tells us ; *Lib. 5. Fol. 413. b. & ſunt quidem brevia formata de certis caſibus, &* [de communi conſilio totius Regni] *conceſſa & approbata* ; And therefore (ſays he, and the Lord *Coke* out of him, 2 *Inſtit.* 407. 8. *Rep. fol.* 48, 49.) *nullatenus mutari poſſunt abſque conſenſu & voluntate eorum.* The Acts indeed by which moſt of the Writs in the Regiſter are appointed, are loſt,

as

as all the Records of *Parliament* are before *Magna Charta*; but by *Acts of Parliament* yet upon record many *writs* are directed, and the *forms* of them expreſs'd in the body of the *Acts*. So that *Writs* in the *Regiſter* are the very *Law* of *England*; they are *Statute-Law*, and the oldeſt *Statute-Law* we have. And conſequently the *King*'s commanding the *Biſhops* to diſcharge perſons, that were in priſon upon a *Capias Excommunicatum*, and commanding the *Sheriff* to deliver them in the *Biſhop*'s default, is no Act of *Perſonal* Prerogative in them; But the ordinary courſe of the *Law* of the Realm, and warranted by *Acts of Parliament*, though, the Records of thoſe Acts being loſt, we now call it *Common-Law*.

Sir *Roger*'s *ninth* Inſtance is, That *our Kings ſuffer'd no Legates to come into* England, *without their leave*. Of which has been diſcours'd already.

The *tenth* is, That *they determin'd Matters of Epiſcopacy* Inconſulto Romano Pontifice. Which is true, they did and had good Right to do, but not *Inconſultis Magnatibus*. Witneſs the Degradation of *Stigand* Arch-biſhop of *Canterbury*, *temp. Willielmi primi*. And

the intended deprivation of *Wolſtan* Biſhop of *Worceſter*. The Controverſie betwixt King *William Rufus* and *Anſelm*; about *Anſelm*'s going to fetch his *Pall* from *Urban*: And that betwixt *Lanfrank* Arch-biſhop of *Canterbury*, and *Thomas* Arch-biſhop of *York*, concerning the Profeſſion of *Canonical Obedience*, which the former required of the Latter: the Chuſing *Biſhops and Arch-Biſhops*: the Controverſies betwixt King *Henry the* 2*d.* and *Thomas Becket*; all heard, debated and determined in *General Aſſemblies* of *Clergy* and *Laity*, and not by our *Kings* apart from their *Great Councels*.

The Eleventh is, That *they permitted No appeals to Rome*. 'Tis true; nor did they ever determine them themſelves, either *in perſon* or by *Commiſſion*. And therefore the Statute of *Clarendon*, which gives *Appeals* from the *Arch-Biſhop* to the *King*, was never underſtood to be to the King *in perſon*, but to the King *in his Court*. As we may ſee by what *Ger. Dorobern. Anno* 1176. *Coll. p.* 1433: And *Hoveden*, *fol.* 313, 314: tell us of the ſtatute made at *Northampton* in King *Henry the ſecond*'s time. Which both of them call

call a renewing of the *Assize of Clarendon*. Now in these Laws made at *Northampton* there is this close Expression concerning *Appeals*; *Justiciæ faciant quærere per consuetudinem terræ illos, qui à Regno recesserunt, & nisi redire voluerint infrà terminum nominatum, & stare ad Rectum* [in Curiâ Domini Regis,] *Utlagentur*. So that, though King *Henry*, as far as in him lay, had given ways to *Appeals* to *Rome* (for when he was absolv'd of the Guilt, that he was supposed to have contracted by having occasioned the death of *Thomas Becket*, part of the satisfaction enjoyn'd him, was, *quod licebit Appellationes libere fieri*; *Radulph: de Diceto. p.* 560) yet the Kingdom afterward meeting in Parliament at *Northampton*, would not quit their interest; But renew'd the Laws of *Clarendon* against forein *Appeals*; And explain the *Appeals ad Regem* to be meant of *Appeals ad Curiam Regis*. But it is a common errour with Men, that are ignorant of our Laws, wherever they find they *King*'s name in any *Acts of Parliament*, or *Judicial Proceedings*, to imagine, that the *King* has some *Personal* Authority out of his *Courts*; But for the present, I will

give but one Inſtance, to detect that miſtake. The *Stat. of Weſtm.* 1. Enacts (*cap.* 15.) what perſons ſhall be *repleviſable*, and what not. Amongſt others, thoſe that are taken by [Commandement le Roy] are appointed not to be bayl'd by that *Statute*. My Lord *Coke*, in his Commentary upon that Law; 2*d Inſtitut. pag.* 186. ſays thus, *viz.* 1. "The *King*, being a body Politick, cannot command but by matter "of *Record*; for *Rex præcipit* and *lex* "*præcipit*, are all one. For the *King* "muſt command by matter of *Record*, "according to *Law*. 2. When any "*Judicial Act* is by *Act of Parliament* "referred to the *King*, it is to be underſtood to be done in ſome *Court* "of Juſtice, according to *Law*. The "words of the Statute of *Rich.* 2. *cap.* "12. are, *ſi non, que il ſort per briefe, ou anter maundement del Roy*. And "yet, it was reſolved by all the Judges "of *England*, that the *King* cannot do "it by any Commandment, but by "*Writ*, or by *Order* or *Rule* of ſome "of his *Courts* of Juſtice, where the "Cauſe dependeth. And *Forteſcue*, "ſpeaking to the *Prince*, to inſtruct him "againſt he ſhould be *King*; *Melius*

(ſays

" (ſays he) *per alios, quàm per teipſum*
" *Judicia reddes, quo proprio ore Nul-*
" *lus Regum Angliæ uſus eſt, & tamen*
" *ſua ſunt omnia Judicia* Regni; *licet per*
" *alios ipſa reddantur; ſicut & judicum*
" *olim ſententias Joſaphat aſſerxit eſſe ju-*
" *dicia Dei.*

The Great Caſe in *tertio Caroli primi* of *Habeas Corpus* turn'd upon this point. The *Judges* indeed betray'd the Nation in that cauſe, as they have done in others in theſe Hundred years laſt paſt, as far as in them lay: but how that Judgment was reſented in *Parliament*, the Reader may inform himſelf out of the *1ſt Vol. of Ruſhworth's Collections*, and the *1ſt part of Doctor Nalſon.* The Law was declared upon that occaſion to be, that *Voluntas Regis eſt ſecundum legem et Juſticiarios ſuos, in Curiâ ſuâ & non in Camerâ*; according to 2 *R.*3. *f.*

The *Twelfth* particular is, that *Our Kings beſtowed Biſhopricks on ſuch as they liked: and tranſlated Biſhops from one See to another:* concerning our *Kings* beſtowing *Biſhopricks* ſomething has been ſaid already. As for their *tranſlating* Biſhops from one See to another, I deſire to hear any one Inſtance in any age of any *Biſhop tranſlated* by the

King, againſt his own will. The *Pope* pretended to ſuch a power, and ſometimes Exerciſed it: and that was one of the miſchiefs, which occaſioned the making of the Statutes of *Proviſors.* But could never yet find, that any of our *Kings* attempted it.

The *Thirteenth particular* is, *Erecting New Biſhopricks.* The Inſtances given by Sir *Roger*, are 1*ſt*, the erecting of the Biſhoprick of *Ely* by King *Henry the* 1*ſt*, *Anno* 1009. taking it out of *Lincoln*-Dioceſs. And yet nothing is more evident, then that this was done by *Act of Parliament.* The Inſtrument Runs thus; *viz. In Nomine ſanctæ & individuæ Trinitatis* Patris *& Filii & ſpiritus ſancti, Anno ab Incarnatione Domini* MCVIII *Indictione. Anno Pontificatus Domini Paſchalis Papæ* 2. *decimo*, Regni *quoque mei ſimiliter decimo*; *Ego* Henricus *Providente Divina Clementia* Rex *Anglorum & Normannorum Dux*, Wilhelmi *Magni* Regis *Filius, qui* Edwardo Regi *Hæreditario jure ſucceſſit in* Regnum; *videns & Eccleſiæ meſſem in* Regno *meo multam eſſe, & Agricolas quidem paucos, et ab hoc plurimum laborantes in Meſſe, et in ipſa Lincolnienſem Eccleſiam multa plebe fœcundam,*

dam, ex Authoritate & Conſilio predicti Papæ Paſchalis, & Aſſenſu ſimul & prece Roberti Lincolnienſis Epiſcopi, & totius Capituli ſui, cum ipſo annuente Domino Anſelmo Beatæ memoriæ Cantuarienſi Archiepiſcopo, & Thoma ſecundo Venerabili Eboracenſium Archiepiſcopo, [& Univerſis Epiſcopis & Abbattibus totius Angliæ, ſed & omnibus Ducibus, Comitibus & Principibus Regni mei] *Elyenſe Monaſterium &c. in Epiſcopalem ſedem, ſicut & cæteros Epiſcopatus Regni mei liberam & abſolutam perenniter ſtatuo & confirmo. vid.* Mr. Selden's *Notas & Spicilegium ad Eadmer. Et Dugdale's Monaſticon.*

And what if All the Biſhopricks of *England*, Erected both before and after, were Erected by *Acts of Parliament*, and not by the *King's Letters Patents* only?

In King *Edward the Elder's* time, upon the Letter of *Pope Formoſus*, *Congregata eſt ſynodus Senatorum, Procerum & Populorum, & Nobilium Gentis Angliæ, In quâ Preſidebat Plegmundus Archiepiſcopus. Tum ſibi Rex cum ſuis, et Plegmundus Archiepiſcopus ſalubre Concilium iniverunt*, and Conſtituted and Elected *five Biſhops* in the Province of the *Gewiſſi*, where there had till then been

but two, dividing those *two Bishopricks* into *five* by *Act of Parliament*. *Spelman's Counc. Volum.* 1. *pag.* 387, 388. *Malmesbury de Gestis Regum Anglorum*; *Lib.* 2. *cap.* 5. This Council *Matthew Westminster, pag.* 181. *Anno Dom.* 9051 calls, *Concilium Grande Episcoporum, Abbatum, & fidelium populorum in Provinciâ Gewiseorum.* In the same *Council* the bounds of their *Dioceses* were Limitted: which the same *Historian* describes. He tells us likewise, that in the same *Council* two other *Bishops* were chosen, One to the Bishoprick of *Dorchester* and another to that of *Chichester.*

In King *Henry* the Eighth's time, *six* New Bishopricks were erected by the King's Letters Patents; *viz. Glocester, Bristol, Chester, Peterborough, Oxford* and *Westminster.* But those *Letters Patents* had the Authority of an *Act* of *Parliament* to warrant them, made in the *One and thirtieth year* of that King's Reign, *cap.* 9. *Be it Enacted by the Authority of this present* Parliament, *that his Highness shall have full power and Authority, from time to time, to declare and nominate by his Letters* Patents, &c. *such number of Bishops, such number of Cities, Sees for Bishops, Cathedral Churches and Dioceses,*

ceſſes, by metes and bounds, &c. *as to his moſt Excellent Wiſdom ſhall be thought neceſſary and convenient. And alſo ſhall have power and Authority, to make and deviſe Tranſlations, Ordinances, Rules and Statutes concerning them*, All *and every of them*, &c. *And that all and ſingular ſuch Tranſlations, Nominations of Biſhops, Cities, Sees and limitation of Dioceſſes for Biſhops, Erections, Eſtabliſhments, Foundations, Ordinances, Statutes, Rules* &c. *ſhall be of as good ſtrength, force, value and effect, to all Intents and purpoſes, as if ſuch things*, &c. *had been done, made and had by Authority of Parliament*. This is moſt apparently an *Enabling Act*; Power is here given to the *King* by Authority of *Parliament*, and it is Enacted, that the Contents of his Letters Patents, to be made for perfection of the Premiſes, ſhall be as valid, as if they had been *Enacted* in *Parliament*. So that, in that King's Judgment, force and validity was by this Act given to his *Letters Patents*, which otherwiſe they would have been deſtitute of, and have been invalid for the End to which they were deſigned.

This was but a *Temporary Act*, and dyed with that *King*, for no ſuch Pow-

er

er is given by the Act to his *Succeſſors*. And therefore in King *Edward* the *ſixth*'s time a Bill was brought into the Houſe of Commons, and read the firſt time, To *authorize that King to make New Biſhopricks by Letters Patents*: As I find in a *Manuſcript Journal* of King *Edward* the Sixth's Parliaments, *Anno Regni* 7. What became of it afterwards, I know not. It was brought in towards the End of the Seſſion, and did not paſs into a Law. But the bringing of it in ſhews, that the *King* was not conceived to have any ſuch Authority of *Common Right*. Nor did that King exerciſe any ſuch Authority. For the *Biſhoprick* of *Durham* was in his Reign divided into two by Act of *Parliament*. And when it was reſtored to its former Eſtate in Queen *Mary's* time, it was done by Act of *Parliament*. *Vid. Dr. Burnet's Hiſtory of the* Reform. *vol.* 2. *p.* 215. *Raſtal's Statutes*, 1 *Mariæ*, *Parl.* 2.

That *Act* of King *Henry* the *Eighth*, by which he was impowered to Erect New Biſhopricks, was Repealed 1 *&* 2 *Phil. & Mar.* And to the End, that by the Repeal of the *Act*, thoſe *Biſhopricks* that had been Erected by vertue of it, might not be conſequentially diſ-

ſolved,

ſolved, A Clauſe was inſerted into the Act of *Repeal*, *That all Biſhopricks, Cathedral Churches, Hoſpitals, Colledges, Schools, and ſuch other Foundations then continuing, made by Authority of Parliament, or otherwiſe, according to the Order of the Laws of the Realm, ſince the ſchiſm, ſhould be confirmed and continued for ever.* So that then the *Biſhopricks*, that had been newly Erected by King *Henry the Eighth*, ſtood upon this Foundation, *viz.* A Confirmation *by Parliament*, notwithſtanding the Repeal of 31 *Henr.* 8. *cap.* 9. But now, that the Statute of 1 & 2 *Phil. et Mar. cap.* 8. is Repeal'd by *Primo Eliz.* and this clauſe of Confirmation not excepted out of the Repeal, I know not upon what bottom they ſtand at this day.

So far were our *Kings* from aſſuming a Power to *Erect* and *divide Biſhopricks* at their pleaſure (as a *late Author*, in a Book intituled, *A Vindication of the King's Sovereign Rights*, &c. *pag.* 12. takes upon him to affirm) That they never ſo much as divided *Pariſhes*, nor could make *Unions* and *Conſolidations* of *Parochial Churches* without Authority of *Parliament*. Witneſs the Statutes of 33 *Henr.* 8. *cap.* 32. 32 *Hen.* 8.

cap.

cap. 44. 37 *Hen.* 8. *cap.* 21. 17 *Car.* 2. *cap.* 3. 22 *Car.* 2. *cap.* 11. 22 & 23 *Car.* 2. *cap.* 15. &c.

Sir *Roger* mentions likewiſe the *Biſhoprick* of *Carliſle*, which was *Erected* by King *Henry* the *Firſt*, *Anno Dom.* 1133. The *Prior* of *Hagulſtad* ſpeaks of this in General terms (*Coll. pag.* 257.) *Conſecratus eſt Adulphus Prior de Noſtlia ad Urbem Karleol, quam* Rex *Henricus initiavit ad ſedem Epiſcopalem. Math. Weſtm.* in like manner, *pag.* 241. *Rex Henricus Novum fecit Epiſcopatum, apud Carleolum, in Limbo Angliæ et Galwalliæ, et poſuit ibi primum Epiſcopum, nomine Ethelulphum ſancti Oſwaldi Priorem. Abbas Jorvallenſis* tells us the ſtory in like terms, *Collect. pag.* 1019. *Eodem Anno* Rex *fecit Novum Epiſcopatum apud Karliolum, quem Arnulfo, Priori de ſancto Bertulpho Contulit.* But it appears by *Radulph. de Diceto*, *Coll. pag.* 505. that in this very year a *Parliament* was held, and a very ſolemn one. *Rex Henricus, Convocatis Regni ſui Principibus, filiam ſuam & hæredes filiæ ſuæ ſibi ſucceſſores inſtituit.* In which *Parliament* it is not unlikely that this Biſhoprick of *Carliſle* was erected, notwithſtanding theſe looſe

looſe Expreſſions of the *Monks*. For the ſame Authors expreſs themſelves in the ſame terms concerning the Biſhoprick of *Ely*: Which yet was erected by *Act of Parliament*. *Radulphus de Diceto*; *Collect. pag.* 501. *Rex Henricus Abbathiam Elyenſem ad Epiſcopalem mutavit ſedem, & Herveum ibi præfecit. Math. Weſtminſt. pag.* 238. *Rex Henricus Abbbathiam Elyenſem in Epiſcopalem ſedem commutavit. Abbas Jorvallenſis*; *pag.* 1003. *Collect. Abbathiam de* Ely *ad ſedem Epiſcopalem convertit, & primum Epiſcopum Herveum Bangorenſem conſtituit.* So that no Argument can be drawn from theſe Hiſtorians mentioning the *King's* Founding the Biſhoprick of *Carliſle*, without naming the *Parliament*, as a party to it, to prove that therefore it was not Erected by *Authority of Parliament*. For if the Charter of the Foundation of the Biſhoprick of *Ely* had been loſt, the ſame Argument would have lain againſt it. And all the Biſhopricks in *England*, of whoſe firſt *Foundations* there is any particular Account given by our Hiſtorians, appear to have been Founded by Our Kings in *Parliament*, or by vertue of an Authority given by *Act of Parliament*.

I ſuppoſe it will not be deny'd, but whenever any Biſhoprick in Particular was *Founded*, at the ſame time it was endow'd. Now Our Ancient *Kings* could not out of *Parliament* endow Biſhopricks, becauſe they could not *diſtrahere patrimonium Regni*. And a further Conſideration to this purpoſe may be drawn from the *Exemptions*, which the poſſeſſions of the *Church* enjoy'd from all ſecular ſervice, Except the *Trinoda neceſſitas*; Which *Exemptions*, were all Granted by Charters *Aſſented* to in *Parliament*, as appears undeniably by the ſeveral Charters Granted in divers Kings Reigns ſucceſſively to the Abby of *Crowland*, All inſerted *in hæc verba* into *Ingulphus* his Hiſtory of that Monaſtery; and by the *Monaſticon*. In which it appears further, that all *Exemptions* from Epiſcopal Juriſdiction, Except of the King's *free Chappels*, which were of his own *Foundation*, were granted in *Parliament*: I mean all ſuch *Exemptions* granted by our *Kings*. For the *Pope* uſed to grant *Exemptions* by Bulls: and thoſe *Papal Exemptions* were confirm'd by Parliament, *temp. Henr.* 8. King *William* the *Conquerour* Founded *Battle*-

Ab-

Abby in *Suſſex*, in the place where he overcame *Harald*; and *Exempted* it from Epiſcopal Juriſdiction. But whether he did it in *Parliament*, or not, let the Charter it ſelf teſtifie; *viz.* "*Willielmus* Dei Gratia Rex *Anglorum*, *&c.* 'Notum ſit Vobis me Conceſſiſſe & 'confirmaſſe, cum Aſſenſu *Lanfranci* Ar'chiepiſcopi *Cantuarienſis*, & *Stigandi* 'Epiſcopi *Ciceſtrenſis*, [*& Conſilio etiam Epiſcoporum & Baronum meorum*,] 'ut Eccleſia Sancti *Martini de Bello*, 'quam Fundavi ex voto, ob Victoriam, 'quam mihi Deus in eodem loco conceſſit, libera ſit & quieta in perpetuum 'ab omni ſervitute & omnibus quæcunque humana mens excogitare poteſt, '*&c.* Nec liceat Epiſcopo *Ciceſtrenſi*, 'quamvis in illius Diœceſi ſit, in Eccleſia illa vel Maneriis ad illam pertinentibus, ex conſuetudine hoſpitari, contra voluntatem Abbatis, nec Ordinationes aliquas facere ibidem, nec Abbatiam in aliquo gravare; ſed neque ſuper illam Dominationem aliquam, aut vim aut poteſtatem exerceat, ſed, ſicut 'mea Dominica Capella, libera ſit omnino ab omni ejus Exactione, *&c.* Hoc 'etiam Regali Authoritate & Epiſcoporum & Baronum meorum Atteſtati-

'one

'one constituo, quatenus Abbas Eccle-
'siæ suæ & leugæ circumjacentis per
'omnia Judex sit & Dominus.

The *Fourteenth* Particular is, that *our Kings have by their Writs commanded Bishops to keep resident.* Which, considering that it was their Duty, incumbent on them by Law, what great Power does it argue in the *King*, to command his Subjects to do what the *Law* enjoyns them?

The *Sixteenth* is, That *they have commanded their Bishops, by reason of Schism or Vacancy in the Popedom, &c. not to seek Confirmation from* Rome, *but the Metropolitans to be charged by the King's Writ, to bestow it on the Elected.* For this Sir *Roger* quotes *Rot. Parl.* 16. *Mart.* 3 *Hen.* 5. *nu.* 11. *Anno Domini* 1414. Now that was done by Act of *Parliament.* Which, because it is observable to many purposes, shall be transcrib'd at large.

"Our Lord the King, considering
'the long Vacancy of the Apostolick
'See, by reason of the damnable Schism,
'which has now continued a long time
'in Holy Church, and is not known
'how long it may yet last, And that
'certain Cathedral Churches within the

'King-

'Kingdom, which are of the Foundati-
'on of his Noble Progenitors, and be-
'long to his Patronage, have been for
'ſome while and are yet deſtitute of
'Parochial Government, becauſe the
'Perſons that are elected into the ſame,
'cannot be confirmed in Parts beyond
'the Sea, for want of an Apoſtle, Altho'
'our ſaid Lord the King hath thereun-
'to given his Royal Aſſent, to the
'Great decreaſe of Divine Service in
'the ſaid Churches, ſubſtraction of
'Hoſpitality, Great peril of many Souls,
'Devaſtation and Deſtruction of the
'Lordſhips and Poſſeſſions belonging
'to the ſame, and the Impoveriſhment
'of ſuch Biſhops Elect; And that by
'poſſibility all the Cathedral Churches
'within the Realm, may become void
'in like manner, and ſo be deſtitute of
'Government, and the King and his
'Realm of Council, Comfort and Aid,
'which they ought to have of the
'Prelacy; And conſidering alſo that in
'divers foreign Parts ſince the Voidance
'of the ſaid See, divers Confirmations
'have been and are daily made by the
'Metropolitans of the places, as he is
'credibly informed, and Willing for
'that cauſe, for ouſting the ſaid Miſ-

'chiefs, to provide ſuch remedy, as it 'behoves, By the full and deliberate 'Advice and Aſſent of the Lords and 'Commons of his Realm in this preſent 'Parliament, Wills and Ordains, that 'the perſons ſo choſen and to be cho-'ſen within his Kingdom during the 'Vacancy of the ſaid See Apoſtolick, 'ſhall be comfirmed by the Metropoli-'tans of the Places without Excuſe or 'further delay in that behalf, And 'that the King's Writs, if need be, be 'directed to the Metropolitans, ſtraitly 'charging them to make the ſaid Con-'firmations. And to perform all that 'to their Office belongeth; As alſo to 'the Biſhops Elect, that they on their 'part Effectually proſecute their Con-'firmations, that through default of 'ſuch Metropolitans or Biſhops Elect, 'dammage or prejudice may not enſue 'to our Lord King, and his Kingdom, 'and to his Realm, and to the ſaid 'Churches for the Cauſe aforeſaid, 'which God forbid.

Here it is plain, that what Sir *Roger* aſcribes to the *King*, was really done [by *the full and deliberate Advice and Aſſent of the Lords and Commons of his Kingdom in Parliament.*]

And

And therefore that the ſupreme Juriſdiction in matters *Eccleſiaſtical*, was not, in the notion of that Age, Lodg'd *perſonally* in the *King*, but in the *King by Law*, in the *King* with his Parliament about him.

Purſuant to this Preſident we find in King *Henry the Eighth*'s time a Notable Act in the 28*th* Year of his Reign; *cap.* 16. In which there is this clauſe; *viz. And that it may be alſo Enacted by Authority of this preſent Parliament, that all Arch biſhops and Biſhops of this Realm, or of any the King's Dominions, Conſecrated and at this preſent time taken and reputed for Arch-biſhops and Biſhops, may* [by Authority of this Preſent Parliament,] *and not by vertue of any Proviſion, or other Forein Authority, Licence, Faculty or Diſpenſation, keep, enjoy and retain their Arch-biſhopricks, in as large and ample manner, as if they had been promoted, Elected and conſecrated according to the due courſe of the Laws of this Realm, And that every Arch-biſhop and Biſhop of this Realm, and of other the King's Dominions, may miniſter, uſe and Exerciſe all and every thing and things, pertaining to the Office or Order of an Arch biſhop and Biſhop, with all*

Tokens, Enſigns and Ceremonies thereunto Lawfully belonging. This Act in the 2*d paragraph* had made void all *Bulls, Diſpenſations, Breves* &c. obtain'd at *Rome*, contrary to the ſtatutes of *Premunire & Proviſors*: whereby many Biſhopricks would have become void. To prevent which the Clauſe here recited, makes them *legal Biſhops* notwithſtanding, and ſupplies all the Ceremonies of *Election* and *Conſecration.* Which I ſuppoſe no man will take upon him to ſay, that the *King* might then have done, notwithſtanding his Newly reſtor'd *Supremacy.*

Sir *Roger's* 16*th* Particular is, that *Our Kings placed by a Lay hand Clerks in Prebendary or Parochial Churches,* Ordinariis penitus irrequiſitis. But, if he had conſidered, that Originally all Church-livings in *England* were Donatives, And that *Preſentations* to *Ordinaries, Admiſſions, Inſtitutions* and *Inductions* thereupon, obtain'd in *England*, in compliance with the *Canons* many years after the *Conqueſt*, he would not have mentioned that, as a ſpecial *prerogative* in the *King*, which was but common to him with *All* his ſubjects, that had been *Founders* and were *Patrons*

trons of Benefices. Mr, *Selden* tells us in his *Hiſtory of Tythes*, *cap.* 12. *ſect.* 5. that *it was not till about the year* MCC *that the Decretals and the Encreaſing Authority of the Canons had ſettled the Univerſal courſe here of filling Churches by Preſentation to the Biſhop, Archdeacon, Vicar of the Biſhop or Guardian of the Spiritualties: and that then the uſe of Inveſtitures of Churches and tythes ſeverally or together, practiſed by Lay-men, was left off, And a Diviſion of ſecular and Eccleſiaſtical Right from thence been continued in practice.* And in the ſame Section (*pag.* 392.) he ſays, that *whilſt the uſe of Lay-Inveſtitures was in being all Churches ſo given were properly Donatives.* For further ſatisfaction as to that Particular, I refer to him.

Sir Roger's ſeventeenth Particular is, that *Our Kings prohibited the Laity from yielding Obedience, or anſwering by Oath to their Eccleſiaſtical Superior, enquiring de peccatis ſubditorum.* This take out of the *Additaments to Matth. Paris: pag.* 200. *num.* 9. from whence *Sir Roger* quotes it. *Item, cum Prælati Eccleſiaſtici inquirere volunt de peccatis ſubditorum, prohibentur laici ne de veritate dicendâ, aut de credulitate aliquod jura-*

mentum exponant, aut Prælatis ſuper hujuſmodi obediant; propter quod multorum exceſſus & peccata mortalia incorrecta & impunita relinquuntur, & ſic præſtatur audacia delinquendi, & peccandi facultas. Now this was no other, then protecting the *Laity* from being impos'd upon by the *Oath ex officio*. And innumerable Authorities might be cited, to prove that no kinds nor forms of *Oaths* can be made or impoſed on the *King's* Subjects, nor preſcribed to them in any new caſes, but by *Act of Parliament* onely; And that no Biſhop or Subject whatſoever hath any power to make or enjoyn any new *Oaths* or forms of *Oaths*, nor any Authority to adminiſter an *Oath* to any Man, without ſome *Legal Commiſſion* from the King under the Great Seal, or ſome *Act of Parliament*, eſpecially Authorizing him to give or take an *Oath*, unleſs in Courts of Record or other Courts, who have Authority to adminiſter *Oaths* by Preſcription. But *Anno Dom.* 1237. *Otho* the Pope's *Legate* in a Council at *London* made this Conſtitution touching *Oaths* in *Spiritual* Cauſes in *Eccleſiaſtical* Courts, till that time not known, nor uſed in *England*, as appears by the words of

the

the *Conſtitution*: *Juſjurandum Calumniæ in cauſis Eccleſiaſticis quibuſlibet, & de veritate dicenda in ſpiritualibus quoque, ut Veritas aperiatur facilius, & cauſæ celerius terminentur ſtatuimus de cætero Præſtari in Regno Angliæ, ſecundum canonicas & Legitimas ſanctiones,* [*Obtentâ in contrarium Conſuetudine Non obſtante.*] *vid. Matth. Paris*; 454. A clear reſolution, that till that time the cuſtom of *England*, and the *Law* of the Land was to the contrary, and that they could not enforce any Man to his *Oath* in ſuch caſes. After which, *Groſthead* Biſhop of *Lincoln*, *Anno* 1246. *Upon the ſuggeſtion of the Fryers Predicant and Minorites, raged more than was meet or Expedient* (they are the words of *Matthew Paris*) *againſt thoſe of his Dioceſs, making ſtrict inquiſition in his Biſhoprick by his Arch-deacons and Deans, concerning the Chaſtity and manners, as well of noble as ignoble* (upon Oath) *to the enormous hurt and ſcandal of the reputations of many.* [Quod nunquam antea fieri conſueverat] *The King hearing the Grievous Complaints of his people, Conſilio Curiæ ſuæ ſcripſit Vicecomiti Hertfordiæ in hæc verba: Henricus Dei Gratia Rex Angliæ &c. Præcipimus tibi,*

quod ſicut teipſum & omnia tua diligis, non permittas, quod aliqui laici de Ballivâ tuâ ad voluntatem Epiſcopi Lincolnienſis, Achidiaconorum, vel Officialium, ſeu Decanorum Ruralium, in aliquo loco Conveniant de cætero, ad cognitiones per ſacramentum eorum vel atteſtationes aliquas faciendas, niſi in cauſis matrimonialibus & Teſtamentariis. Matth. Par. p. 716. And the very next year following, in purſuance hereof, the *King* by *Parliament* Enacted and Commanded, That if any Lay-man were convented before any Eccleſiaſtical Judge for breach of Faith and Perjury, that they ſhould be prohibited by the *King*: and that the Eccleſiaſtical Judge ſhould be prohibited to hold plea for all Cauſes againſt Lay-men, unleſs they were of Matrimony and Teſtament: All which *Matth. Paris* preciſely relates; *pag.* 727. Which *Prohibition* and *Statute* nullified the Conſtitution of *Otho*, and put a ſtop to this his innovation. But yet about nine years after *Boniface* Arch-biſhop of *Canterbury* publiſhed this peremptory Conſtitution in affront to them both; *Statuimus quod laici, ubi de ſubditorum peccatis & exceſſibus corrigendis per Prælatos & Eccleſiaſticos judices inquiritur, ad præſtandum*

ſtandum de Veritate dicendâ juramentum, per Excommunicationis ſententias, ſi opus fuerit, Compellantur; Impedientes vero ne hujusmodi juramenta præſtentur (for the Judges, with many others then generally oppugned and hindred the uſhering in of this Innovation) *per interdicti & excommunicationis ſententiam arceantur.* To evacuate which illegal *Conſtitution*, trenching both upon the people's Liberties, and the *Courts of Juſtice* too; the *Judges* frequently Granted out ſundry General *Prohibitions* to all or moſt of the Sheriffs of *England*, as is evident by the *Regiſter of Writs*, *Pars* 2. *fol.* 36. 43. 50. *Fitzherbert's Nat. Brev. fol.* 41. *A. Auxy home poit ſuer prohibition direct al Viſcount que le Viſcount ne permit ne ſuffer les lay ſubjects del Roy de vener a aſcun lieu al citation del Eveſque ad faciend' aliquas recognitiones, vel ſacrament preſtand. niſi in cauſis matrimonialibus & Teſtamentariis.* Raſtal's *Abridgment of the ſtatutes*, *Title*, *Prohibit. nu.* 5. *Upon which Prohibitions* this *Attachment followed*; *The King to the Sheriff Greeting. Cauſe ſuch a Biſhop to put in ſureties to appear before our Juſtices &c. to ſhew cauſe why he made certain Lay perſons to be ſummoned and diſtrained by Eccleſiaſtial cenſures, to appear*

before

before him at his pleasure, to take an Oath against their Wills, In Grave Præjudicium Coronæ & Dignitatis nostræ Regiæ, *necnon contra consuetudinem Regni nostri.* By all which and by the *Petition of Right* it self, it appears evidently that this *Juramentum Calumniæ*, or *Oath ex officio* was utterly against Law. For one of the Grievances complain'd of in that *Petition*, was, that *the King's Subjects had had an Oath administred to them, not warrantable by the Laws and Statutes of the* Realm. Now what use the *Doctor* can make of this Particular; *viz.* of the *King's prohibiting* the *Clergy* from Oppressing his Lay-Subjects contrary to Law, I cannot discover.

Sir *Roger's eighteenth* and last particular, is an *observation in* Matth. Paris; *where the Ecclesiasticks having enumerated several cases, in which they held themselves hardly dealt with, add, That in all of them if the Spiritual Judge proceeded contrary to the King's prohibition, he was attached, and appearing before the Justices, constrained to produce his proceedings, that they might determine to which Court the Cause belonged. By which,* says he, *it is manifest how the King's Courts had the superintendency over the Ecclesiastick.* This

makes

makes nothing for any *Extrajudicial, Perſonal, Arbitrary* power in the *King* in the *Eccleſiaſtical* matters, and is ſo far from impugning, that it corroborates my *hypotheſis*.

That the *Temporal* and *Eccleſiaſtical Courts* often quarrel'd about their Juriſdiction, and that the *Clergy* ſometimes made and attempted to put in execution *Canons* directly contrary to the *Laws of the Realm*, thereby endeavouring to uſurp and encroach upon many matters, which apparently belonged to the *Common Laws*, as, the tryal of Limits and Bounds of Pariſhes, the Right of Patronage, the tryal of right of Tythes by *Indicavit*, Writs to the Biſhop upon a recovery in a *Quare impedit*, the tryal of Titles to Church-Lands, concerning Diſtreſſes and Attachments within their own Fees, and many other things which belonged to the *King's Temporal Courts*; That the *Temporal* Courts granted *Prohibitions* in theſe and other like caſes; that the *Clergy* hereupon complain'd not to the *King* but to the *Parliament*, *Ann.* 51 *H.* 3. twice during the Reign of *Edw.* 1. and afterwards *anno Edw.* 2. may be read at large in the Lord *Coke's ſecond Inſtitutes*, 599, 600, 601, &c. So that the *King* deter-

determined to which Court Cauſes belonged, either in his Courts of Ordinary Juſtice, or, if the Clergy remain'd unſatisfied with the Opinions of the Judges, in his High Court of *Parliament*, and no otherwiſe.

But we need not wonder that ſuch a Prelate as Arch-biſhop *Bancroft*, whoſe Divinity had taught him that *the King may take what cauſes he ſhall pleaſe to determine, from the determination of the Judges, and determine them himſelf, and that ſuch Authority belonged to Kings by the Word of God in the Scripture*, we need not wonder, I ſay, to find him in King *James the Firſt's* time Exhibiting *Articles of Abuſes in granting Prohibitions*, againſt the *Judges*, to the *Lords* of the *Privy Council*; As if the Lords of the Privy Council had any Authority to direct the Judges in their adminiſtration of Juſtice, or to ſet bounds to the Juriſdiction of any Court. *Vid.* 2 *Inſt.* 601, 602, *&c.* & 12 *Co. p.* 63, 64, 65.

By what has been ſaid I hope it appears ſufficiently, that the *Ancient Juriſdiction* of our *Kings* in *Eccleſiaſtical matters* was ſuch a Juriſdiction, and no other than they had in *Temporal matters*, *viz.* in their *Great Councels*, and in their Ordi-

Ordinary *Courts of Juſtice*: And that not only our Mercenary *Doctor*, but more learned and wiſer men than he, have unwarily confounded that *Juriſdiction* with a Fiction of their own brains, by which they have aſcribed to the King a *Perſonal Supremacy*, without any warrant from *Antiquity*, *Law*, or *Hiſtory*.

Witneſs theſe looſe Expreſſions in Sir *Roger Twiden's Hiſtorical Vindication &c.* 'It cannot be denyed, but 'the neceſſity of being in union with 'the true Pope (at leaſt in time of 'ſchiſm did *wholly* depend on the 'King: *pag.* 2. The *Engliſh* have 'ever eſteemed the Church of *Canter-* 'bury in Spirituals, that is, *quæ ſui ſunt* 'ordinis, without any intervening Su- 'perior *omnium noſtrum mater commu-* 'nis ſub ſponſi ſui Jeſu Chriſti diſpoſiti- 'one: in other things, as points of Go- 'vernment, the Ordering that of Right 'and Cuſtom ever to have belonged 'to the *King*, aſſiſted with his Coun- 'cel of *Biſhops*, *and others of the Clergy*, 'who was therefore called *Vicarius Chri-* 'ſti, &c. *pag.* 21. The *King* and the 'Arch-biſhop, or rather the Arch-biſhop 'by the *King*'s will and appointment 'had ever taken cognizance of all mat-

'ters

' ters of Episcopacy, as the Erection of ' Bishopricks, disposing and transslating ' of Bishops &c. *p.* 24. *and innumerable* ' *others.*

But to go on with Dr. *Johnston* and draw to a conclusion; he acknowledges (pag. 157) that *he does not find that by immediate Commission the Kings of* England *Visited before King* Henry *the Eighth's time.* And if no such thing can be found, then what authority can our Kings now have to exercise such a Jurisdiction unless by vertue of some Act of Parliament made in or since his time?

But (says he) *we have sufficient grounds to judge, that whatever was done, was by the King's Power and Authority:* which is a wild, extravagant, ignorant expression, and hardly common sense. *And therefore* (says he) Sir *Edward Coke* in *Cawdrie's* case, *Lays it down for a* Rule. ' That as in ' Temporal Causes, the King by the ' Mouth of the Judges in the Courts of ' Justice doth judge and determine the ' same by the Temporal Laws of *En-* ' *gland*, so in causes Ecclesiastical and ' spiritual by his Ecclesiastical Judges ' according to the Ecclesiastical Laws

' of

'of the Realm: and that ſo many of 'the Eccleſiaſtical Laws, as were pro-'ed, approved and allowed here, by 'and with general conſent, are aptly 'and rightly called the King's Eccle-'ſiaſtical Laws: and whoſoever deny-'eth this, denyeth the King to have 'full and plenary power to deliver 'Juſtice in all caſes to all his Subjects, '&c. pag. 157. *which that he has, he 'proves by the Preamble of* ſtat. 24 Hen. 8. 'cap. 12. *And what then? May the King therefore erect New Courts directly contrary to* poſitive Laws, *Command things* arbitrarily *upon pain of ſuſpenſion, deprivation*, &c. *and Command things* contrary to Law *by vertue of* his Eccleſiaſtical Laws?

The *Doctor* concludes this *Section* with the Act of 26 *Hen.* 8. *cap.* 1. commonly called *the Act of Supremacy* (which now ſtands Repealed) And with 1 *Eliz. by which* (he ſays) *all the Powers given by the Act of* 26 *H.* 8. *are reſtored to the Crown under the name of Supreme Governour.*

But, the former Diſcourſe was deſigned to be brought down no lower then to the end of King *Henry the Eighth's* Reign: And therefore I ſhall ſay nothing

thing in this place of the *Act* of 1 *Eliz.* but perhaps I may have occaſion to ſhew hereafter that the *Doctor* underſtands the Act of 1 *Eliz.* as little, as any thing elſe that he pretends to write upon.

FINIS.